

# IDAHO CODE

## TITLES 44 to 48

### LABOR to MONOPOLIES AND TRADE PRACTICES

Current through 2020 Regular Session

MICHIE

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**IDAHO CODE**  
CONTAINING THE  
**GENERAL LAWS OF IDAHO**  
**ANNOTATED**

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ORIGINALLY PUBLISHED BY AUTHORITY OF  
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF  
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the  
Idaho Code Commission

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**TITLES 44–48**

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ISBN 978-1-5221-9624-2 (print)

ISBN 978-0-327-19267-1 (eBook)

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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.”

**Section 67-510 Idaho Code** provides: “No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.”

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E.S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E.S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E.S.) .....	March 20, 1935
1935 (2nd E.S.) .....	July 10, 1935
1935 (3rd E.S.) .....	July 31, 1936

1937 .....	March 6, 1937
1937 (E.S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E.S.) .....	March 1, 1944
1944 (2nd E.S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E.S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E.S.) .....	February 25, 1950
1951 .....	March 12, 1951
1952 (E.S.) .....	January 16, 1952
1953 .....	March 6, 1953
1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971

1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
1981 (E.S.) .....	July 21, 1981
1982 .....	March 24, 1982
1983 .....	April 14, 1983
1983 (E.S.) .....	May 11, 1983
1984 .....	March 31, 1984
1985 .....	March 13, 1985
1986 .....	March 28, 1986
1987 .....	April 1, 1987
1988 .....	March 31, 1988
1989 .....	March 29, 1989
1990 .....	March 30, 1990
1991 .....	March 30, 1991
1992 .....	April 3, 1992
1992 (E.S.) .....	July 28, 1992
1993 .....	March 27, 1993
1994 .....	April 1, 1994
1995 .....	March 17, 1995
1996 .....	March 15, 1996
1997 .....	March 19, 1997
1998 .....	March 23, 1998
1999 .....	March 19, 1999

2000 .....	April 5, 2000
2001 .....	March 30, 2001
2002 .....	March 15, 2002
2003 .....	May 3, 2003
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S) .....	August 25, 2006
2007 .....	March 30, 2007
2008 .....	April 2, 2008
2009 .....	May 8, 2009
2010 .....	March 29, 2010
2011 .....	April 7, 2011
2012 .....	March 29, 2012
2013 .....	April 4, 2013
2014 .....	March 20, 2014
2015 .....	April 11, 2015
2015 (E.S.) .....	May 18, 2015
2016 .....	March 25, 2016
2017 .....	March 29, 2017
2018 .....	March 28, 2018
2019 .....	April 11, 2019
2020 .....	March 20, 2020



**Title 44**  
**LABOR**

Chapter

- Chapter 1. Department of Labor and Industrial Services, §§ 44-101 — 44-120.
- Chapter 2. Employer Duties, §§ 44-201 — 44-211.
- Chapter 3. Private Employment Agencies. [Repealed.]
- Chapter 4. Former Federal Employment System. [Repealed.]
- Chapter 5. Protection of Mechanics, §§ 44-501 — 44-503.
- Chapter 6. Union Labels, §§ 44-601 — 44-607.
- Chapter 7. Injunctive Relief in Labor Disputes, §§ 44-701 — 44-713.
- Chapter 8. Secondary Boycott Act, §§ 44-801 — 44-803.
- Chapter 9. Employment Contracts, §§ 44-901 — 44-905.
- Chapter 10. Public Works, §§ 44-1001 — 44-1006.
- Chapter 11. Day's Work. [Repealed.]
- Chapter 12. Hours Worked Act, §§ 44-1201 — 44-1204.
- Chapter 13. Child Labor Law, §§ 44-1301 — 44-1308.
- Chapter 14. Employers' Liability Act, §§ 44-1401 — 44-1407.
- Chapter 15. Minimum Wage Law, §§ 44-1501 — 44-1510.
- Chapter 16. Farm Labor Contractor Licensing, §§ 44-1601 — 44-1618.
- Chapter 17. Discriminatory Wage Rates Based upon Sex, §§ 44-1701 — 44-1704.
- Chapter 18. Employment of Firefighters, §§ 44-1801 — 44-1812.
- Chapter 19. Sanitation Facilities for Farm Workers, §§ 44-1901 — 44-1905.
- Chapter 20. Right to Work, §§ 44-2001 — 44-2014.
- Chapter 21. Manufactured Home Dealer and Installer Licensing, §§ 44-2101 — 44-2108.
- Chapter 22. Manufactured Home Installation Standard, §§ 44-2201 — 44-2206.
- Chapter 23. Construction Standards for Energy Conservation. [Repealed.]
- Chapter 24. Idaho Professional Employer, §§ 44-2401 — 44-2407.
- Chapter 25. Mobile Home Rehabilitation, §§ 44-2501 — 44-2504.
- Chapter 26. Voluntary Contributions Act, §§ 44-2601 — 44-2605.
- Chapter 27. Agreements and Covenants Protecting Legitimate Business Interests, §§ 44-2701 — 44-2704.



## Chapter 1

### DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES

Sec.

44-101. Department of labor and industrial services. [Repealed.]

44-102. Director of department. [Repealed.]

44-103. Duties of the director. [Repealed.]

44-104 — 44-104B. [Amended and Redesignated.]

44-105 — 44-109. [Amended and Redesignated.]

44-110 — 44-118. [Repealed.]

44-119. Federal aid. [Repealed.]

44-120. Mine safety advisory board. [Repealed.]

**§ 44-101. Department of labor and industrial services. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1949, ch. 254, § 1, p. 511; am. 1974, ch. 39, § 2, p. 1023; am. 1980, ch. 117, § 1, p. 255; am. 1984, ch. 123, § 37, p. 281, was repealed by S.L. 1996, ch. 421, § 7, effective July 1, 1996.

**§ 44-102. Director of department. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1949, ch. 254, § 2, p. 511; am. 1974, ch. 39, § 3, p. 1023, was repealed by S.L. 1996, ch. 421, § 7, effective July 1, 1996.

**§ 44-103. Duties of the director. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1949, ch. 254, § 3, p. 511; am. 1974, ch. 39, § 4, p. 1023; am. 1974, ch. 119, § 1, p. 1290; am. 1980, ch. 117, § 2, p. 255; am. 1984, ch. 123, § 38, p. 281; am. 1988, ch. 264, § 23, p. 519, was repealed by S.L. 1996, ch. 421, § 7, effective July 1, 1996.

**§ 44-104. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-104 was amended and redesignated as § 39-4130 by § 8 of S.L. 1996, ch. 421. Section 39-4130 was repealed by S.L. 2002, ch. 126, § 5 and S.L. 2002, ch. 345, § 1, effective July 1, 2002.

**§ 44-104A. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-104A was amended and redesignated as § 44-105 by S.L. 1974, ch. 39, § 6, and then amended and redesignated as § 39-4131 by § 9 of S.L. 1996, ch. 421. Section 39-4131 was repealed by S.L. 2002, ch. 126, § 5 and S.L. 2002, ch. 345, § 1, effective July 1, 2002.



**§ 44-104B. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-104B was amended and redesignated as § 44-119 by S.L. 1974, ch. 39, § 20. Section 44-119 was repealed by S.L. 1996, ch. 421, § 15, effective July 1, 1996.

**§ 44-105. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Prior Laws.**

Another former § 44-105, which comprised S.L. 1949, ch. 254, § 5, p. 511, was repealed by S.L. 1974, ch. 39, § 1.

**Compiler's Notes.**

Former § 44-105, which was former § 44-104A, was amended and redesignated as § 39-4131 by § 9 of S.L. 1996, ch. 421. Section 39-4131 was repealed by S.L. 2002, ch. 126, § 5 and S.L. 2002, ch. 345, § 1, effective July 1, 2002.

**§ 44-106. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-106 was amended and redesignated as § 72-1381 by § 10 of S.L. 1996, ch. 421.

**§ 44-107. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-107 was amended and redesignated as § 72-1382 by § 11 of S.L. 1996, ch. 421.

**§ 44-107A. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-107A was amended and redesignated as § 72-1383 by § 12 of S.L. 1996, ch. 421. Section 72-1383 was repealed by S.L. 1998, ch. 1, § 101, effective July 1, 1998.

**§ 44-107B. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-107B was amended and redesignated as § 72-1384 by § 13 of S.L. 1996, ch. 421. Section 72-1384 was repealed by S.L. 1998, ch. 1, § 101, effective July 1, 1998.

Idaho Code § 44-108

**§ 44-108. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-108 was amended and redesignated as § 72-1385 by § 14 of S.L. 1996, ch. 421.

**§ 44-109. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Prior Laws.**

Another former § 44-109, which comprised 1893, p. 152, § 5; am. 1895, p. 160, § 4; reen. 1899, p. 221, § 5; reen. R.C., § 202; reen. C.L. 228:4; C.S., § 5473; I.C.A., § 46-104; am. 1951, ch. 211, § 2, p. 439; am. 1969, ch. 35, § 6, p. 74; **I.C., § 47-104** as amended and changed to § 44-109 by S.L. 1974, ch. 39, § 10, p. 1023, was repealed by S.L. 1980, ch. 117, § 3.

**Compiler's Notes.**

Former § 44-109 was amended and redesignated as § 44-1812 by § 15 of S.L. 1996, ch. 421.



**§ 44-110 — 44-118. Examination of mines — Complaints to director — Neglect of mine owner — Inspectors — Accidents — Records — Reports — Safety inspections.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1893, p. 152, §§ 2, 6, 7, 9; am. 1895, p. 160, §§ 1, 2, 5, 6, 8, 10, 12, 13; reen. 1899, p. 221, §§ 1 to 3, 6 to 8, 10, 12, 13; reen. R.C., §§ 199, 200, 203 to 205, 207, 209; am. 1911, ch. 199, § 1, p. 663; reen. C.L. §§ 228:1, 228:2, 228:5 to 228:7, 228:9, 228:11; C.S., §§ 5470, 5471, 5474 to 5476, 5478, 5480; am. 1921, ch. 24, § 1, p. 32; am. 1927, ch. 131, § 1, p. 174; I.C.A., §§ 46-101, 46-102, 46-105 to 46-107, 46-109, 46-111; am. 1941, ch. 48, § 1, p. 103; am. 1945, ch. 29, § 1, p. 36; am. 1949, ch. 173, § 1, p. 370; am. 1951, ch. 25, § 1, p. 37; am. 1953, ch. 216, § 2, p. 380; am. 1957, ch. 316, § 2, p. 674; am. 1961, ch. 325, § 1, p. 617; am. 1967, ch. 126, § 1, p. 294; am. 1969, ch. 35, §§ 2, 3, 7 to 10, p. 74; am. 1969, ch. 186, §§ 1, 2, p. 551; am. 1971, ch. 136, § 33, p. 522; **I.C., §§ 47-101, 47-102, 47-105 to 47-107, 47-109, 47-111, 47-114, 47-115** as amended and redesignated §§ 44-110 to 44-118 by S.L. 1974, ch. 39, §§ 10 to 19, p. 1023, were repealed by S.L. 1980, ch. 117, § 3.

**§ 44-119. Federal aid. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 44-104B, as added by 1971, ch. 249, § 1, p. 1004; I.C., § 44-104B as amended and changed to § 44-119 by S.L. 1974, ch. 39, § 20, p. 1023, was repealed by S.L. 1996, ch. 421, § 16, effective July 1, 1996.

**§ 44-120. Mine safety advisory board. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 44-120**, as added by 1974, ch. 119, § 2, p. 1290, was repealed by S.L. 1980, ch. 117, § 3 which was approved by the governor March 20, 1980. However, it was also amended by § 44 of S.L. 1980, ch. 247 which was approved by the governor March 31, 1980. As amended by § 44, this section would have read: “**44-120. Mine safety advisory board.** — (1) There is hereby created in the department of labor and industrial services a mine safety advisory board hereinafter referred to as the ‘board’: consisting of seven (7) members, three (3) of whom shall be persons qualified by experience and affiliation to present the viewpoint of operators of both surface and underground mines and three (3) of whom shall be persons qualified by experience and affiliation to present the viewpoint of workers in both surface and underground mines, and one (1) who shall be a representative of the state industrial commission. The members of the board shall be appointed by the governor of the state of Idaho for a term of four (4) years. The governor of the state of Idaho shall fill any vacancies which may, from time to time, arise on said board for the remaining term of office of such member who has resigned, is removed from office, or for some reason is unable to carry out the responsibilities of his office.

“(2) The mine safety advisory board shall meet at such times as the director of the department of labor and industrial services or three (3) members of the board shall deem necessary in order to perform those duties as set forth in this chapter. Meetings by the mine safety advisory board shall not be less frequent than once each year, and at least once each year said mine safety advisory board shall review mine safety regulations and make recommendations regarding changes thereof deemed necessary.

“(3) Members of the board shall be compensated as provided by **section 59-509(b), Idaho Code**, while attending meetings of the board as provided for by the state board of examiners. The director of the department of labor

and industrial services is hereby authorized to provide the board with such clerical, technical, legal and other assistance as shall be necessary to permit the board to perform its duties as provided in this chapter.”



## Chapter 2

### EMPLOYER DUTIES

Sec.

44-201. Employer duties.

44-202. Employee assistance programs.

44-203 — 44-211. [Repealed.]

**§ 44-201. Employer duties.** — (1) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment.

(2) An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information.

There is a rebuttable presumption that an employer is acting in good faith when the employer provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee or at the request of the current or former employee.

The presumption of good faith is rebuttable only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead.

For the purposes of this section, “actual malice” means knowledge that the information was false or given with reckless disregard of whether the information was false.

### **History.**

I.C., § 44-201, as added by 1996, ch. 131, § 1, p. 453.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 44-201, which comprised 1915, ch. 169, § 1, p. 388; compiled and reen. C.L. 97:1; C.S., § 2297; I.C.A., § 43-201, was repealed by S.L. 1982, ch. 33, § 1.

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and operation of state blacklisting statutes. [95 A.L.R.5th 1](#).



**§ 44-202. Employee assistance programs.** — (1) As used in this section:

(a) “Provider” means any professional licensed under the laws of this state whose communications with clients or patients are subject to any requirement of confidentiality or privilege pursuant to the laws, regulations, or rules of court of this state and who provides professional services to employee assistance program participants.

(b) “Participants” means employees eligible to participate in an employee assistance program and all others eligible to participate in an employee assistance program by virtue of their relationship to an employee.

(c) “Employee assistance program” means a program established by an employer for the benefit and convenience of its employees pursuant to which participants access the professional services of one (1) or more providers regardless of who is responsible for the payment of any fees charged for such services, and regardless of the type of employment or business relationship, if any, that the employer has with the providers involved.

(2) No provider shall disclose to an employer, and no employer shall be entitled to obtain disclosure of, a communication from a participant that is privileged from disclosure, or required to be kept confidential by a provider, under the laws, regulations or rules of court of this state. No employer shall be held liable in any degree on the basis of any communication between a participant and a provider unless the employer actually knew, or should have known, of the information communicated before the alleged breach of duty or harm occurred. The nature of the employment or business relationship between the employer and the provider shall not be a consideration in determining whether an employer actually knew of the information communicated between a participant and a provider.

(3) No participant shall be required to waive the confidential or privileged nature of any communication as a condition of participating in an employee assistance program, but this subsection shall not apply to an

employer's referral of an employee to a provider which is a condition of the employee's continued employment.

**History.**

I.C., § 44-202, as added by 1999, ch. 366, § 2, p. 967.

**STATUTORY NOTES**

**Prior Laws.**

Former § 44-202, which comprised 1915, ch. 169, §§ 2 to 11, p. 388; compiled and reen. C.L. 97:2 to 97:11; C.S., §§ 2298 to 2307; I.C.A., §§ 43-202 to 43-211, was repealed by S.L. 1982, ch. 33, § 1.

**§ 44-203 — 44-211. Municipal employment agencies — Equipment — Fees — Clerks — Penalties.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1915, ch. 169, §§ 2 to 11, p. 388; compiled and reen. C.L. 97:2 to 97:11; C.S., §§ 2298 to 2307; I.C.A., §§ 43-202 to 43-211 were repealed by S.L. 1982, ch. 33, § 1.



## Chapter 3

### PRIVATE EMPLOYMENT AGENCIES

Sec.

44-301 — 44-303. [Repealed.]

**§ 44-301 — 44-303. Private employment agencies — License — Bond — Penalty.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1901, p. 131, §§ 1 to 3; reen. R.C. & C.L., §§ 1443 to 1445; C.S., §§ 2308 to 2310; I.C.A., §§ 43-301 to 43-303, were repealed by S.L. 1982, ch. 33, § 1.



Chapter 4  
FORMER FEDERAL EMPLOYMENT SYSTEM

Sec.

44-401 — 44-403. [Repealed.]



**§ 44-401 — 44-403. Former federal employment system. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1935 (1st E.S.), ch. 22, §§ 1 to 5, p. 91, were repealed by S.L. 1986, ch. 24, § 1.



## Chapter 5

### PROTECTION OF MECHANICS

Sec.

44-501. Employers to make statement.

44-502. Statement before employing mechanics and laborers — Recording and posting.

44-503. Violation of chapter a misdemeanor.

**§ 44-501. Employers to make statement.** — It shall be the duty of any person, persons, company or corporation engaged in working any mine, mines, mining premises or in developing any mining claim or claims, whether quartz or placer, or in the running of any tunnel, or in the erection or repair of any building or other structure, or in the construction of any canal, ditch, railroad, wagon road or aqueduct, in every case where mechanics or laborers are employed in or about the properties above-mentioned to make, record and publish a statement under oath, setting forth the following data:

1. The name or names of the owner or owners of the mine, mines, mining claims or premises, tunnel, building, canal, ditch, railroad, wagon road, aqueduct or other structure upon which work is being done or upon which it is intended to begin work.

2. The name or names of the person, persons, company or corporation engaged in, or who contemplates engaging in, work upon any of the properties or structures mentioned herein.

3. The conditions under which said person, persons, company or corporation is prosecuting said work, whether as owner, agent, lessee, contractor, subcontractor, contemplative purchaser or lienholder.

4. The principal office of said person, persons, company or corporation, and, if a corporation, the state or county where incorporated and the agent in this state on whom service may be had.

5. The day of the week or month when payment of the laborers, mechanics and materialmen will be made, and the place where said payments will be made.

6. A statement of all mortgages and liens against the property on which work is being done, with the amount of each of said encumbrances and whether or not the same is due.

### **History.**

1899, p. 365, §§ 1, 2; compiled and reen. R.C. & C.L., § 1446; C.S., § 2311; I.C.A., § 43-401.

## STATUTORY NOTES

### **Cross References.**

Mechanics' liens, § 45-501 et seq.

## CASE NOTES

### **Notice by Agent.**

Notice posted at mine that certain person, as trustee for others, was employer is not sufficient to bind such other without their knowledge, since it is merely a statement by agent. *Groome v. Fisher*, 48 Idaho 771, 284 P. 1030 (1930).

**§ 44-502. Statement before employing mechanics and laborers — Recording and posting.** — Any person, persons, company or corporation who shall engage in working, developing or prospecting any mine, mines, mining claim or premises, or in running any tunnel, or in repairing or erecting any building, or in constructing any canal, ditch, railroad, wagon road, aqueduct or other structure, and shall employ any mechanics or laborers in prosecuting said work, shall, before employing said mechanics or laborers or any of them, make a statement under oath containing the data provided for in section 44-501[, Idaho Code], and file the same for record in the office of the recorder of the county in which said labor is being done, and if there be a district recorder, then also in the office of said district recorder of the district where said mechanics or laborers are employed, and also to post similar statements in his or its office, at the place where the payment of wages is to be made, and in a public and conspicuous place where it can be easily seen at or near the place where said mechanics or laborers are employed.

**History.**

1899, p. 365, §§ 3, 4; compiled and reen. R.C. & C.L., § 1447; C.S., § 2312; I.C.A., § 43-402.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

**§ 44-503. Violation of chapter a misdemeanor.** — Any person, persons, company or corporation, or any managing agent violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100, or by imprisonment in the county jail for not exceeding three (3) months.

**History.**

1899, p. 365, § 5; reen. R.C. & C.L., § 1448; C.S., § 2313; I.C.A., § 43-403.

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• [Title 44](#)», « [Ch. 6](#) »



## Chapter 6

### UNION LABELS

Sec.

44-601. Unlawful to counterfeit union label.

44-602. Penalty for counterfeiting union label.

44-603. Record of label.

44-604. Penalty for fraudulent record.

44-605. Injunction and damages for infringement.

44-606. Penalty for unauthorized use of label.

44-607. Penalty for unauthorized use of name.

**§ 44-601. Unlawful to counterfeit union label.** — Whenever any person, or any association or union of workingmen, has heretofore adopted or used, or shall hereafter adopt or use, any label, term, design, device or form of advertisement, other than a trademark or a service mark, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other products of labor, as having been made, manufactured, produced, prepared, packed or put on sale, by such person, or association, or union of workingmen, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, term, design, device or form of advertisement.

**History.**

1897, p. 123, § 1; reen. 1899, p. 316, § 1; reen. R.C. & C.L., § 1449; C.S., § 2314; I.C.A., § 43-501; am. 1965, ch. 306, § 1, p. 818.

**STATUTORY NOTES**

**Cross References.**

Penalty for unauthorized use of union label, etc., § 44-606.

Registration of trademarks, § 48-502.

**§ 44-602. Penalty for counterfeiting union label.** — Whoever counterfeits or imitates any such label, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters, or circulates any counterfeit or imitation of any such label, term, design, device or form of advertisement, other than a trademark or a service mark; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be guilty of a misdemeanor and be punished by a fine of not more than \$100, or by imprisonment for not more than three (3) months.

**History.**

1897, p. 123, § 2; reen. 1899, p. 316, § 2; reen. R.C. & C.L., § 1450; C.S., § 2315; I.C.A., § 43-502; am. 1965, ch. 306, § 2, p. 818.

**§ 44-603. Record of label.** — (1) Every such person, association or union, that has heretofore adopted or used, or shall hereafter adopt or use, a label, term, design, device or form of advertisement, other than a trademark or a service mark, as provided in [section 44-601, Idaho Code](#), may file the same for record in the office of the secretary of state, by leaving two (2) copies, counterparts or facsimiles thereof with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing or on whose behalf such label, term, design, device, or form of advertisement shall be filed, has the right to use of the same; that no other person, firm, association, union or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of twenty dollars (\$20.00). Said secretary shall deliver to such person, association, or union, so filing or causing to be filed any such label, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said secretary shall receive a fee of twenty dollars (\$20.00). Any such certificate of record shall, in all suits and prosecutions under this chapter, be sufficient proof of the adoption of such label, term, design, device or form of advertisement. Said secretary of state shall not record for any person, union, or association, any label, term, design, device or form of advertisement that would probably be mistaken for any label, term, design, device or form of advertisement theretofore filed by or on behalf of any other person, union or association.

(2) Registration of a label, term, design, device, or form of advertisement hereunder shall be effective for a term of ten (10) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registered label, term, design, device or form of advertisement may be

renewed for a like term. A renewal fee of twenty dollars (\$20.00), payable to the secretary of state, shall accompany the application for renewal of the registration. A label, term, design, device or form of advertisement registration may be renewed for successive periods of ten (10) years in like manner. The secretary of state shall notify registrants of labels, terms, designs, devices or forms of advertisements hereunder of the necessity of renewal within the year next preceding the expiration of the ten (10) years from the date of registration by writing to the last known address of the registrants.

Any registration in force on the date on which this act shall become effective shall expire ten (10) years from the date of the registration or of the last renewal thereof or one (1) year after the effective date of this act, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six (6) months prior to the expiration of the registration.

All applications for renewals under this act, whether of registrations made under this act or of registrations effected under any prior act, shall include a statement that the mark is still in use in this state. The secretary of state shall within six (6) months after the effective date of this act notify all registrants of a label, term, design, device or form of advertisement, under previous acts of the date of expiration of such registration unless renewed in accordance with the provisions of this act, by writing to the last known address of the registrants.

### **History.**

1897, p. 123, § 3; reen. 1899, p. 316, § 3; reen. R.C., § 1451; compiled and reen. C.L., § 1451; C.S., § 2316; I.C.A., § 43-503; am. 1965, ch. 306, § 3, p. 818; am. 1984, ch. 56, § 6, p. 95.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Compiler's Notes.**

The term “this act” in the last two paragraphs of this section refers to S.L. 1965, Chapter 306, which is codified as §§ 44-601 to 44-606.

The phrase “the effective date of this act” in the last two paragraphs of this section refers to the effective date of S.L. 1965, Chapter 306, which was effective March 29, 1965.

**§ 44-604. Penalty for fraudulent record.** — Any person who shall, for himself or on behalf of any other person, association or union, procure the filing of any label, term, design or form of advertisement, other than a trademark or a service mark, in the office of the secretary of state under the provisions of this chapter, by making any false or fraudulent representations or declarations, verbally or in writing or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of, the party injured thereby, in any court having jurisdiction, and shall be guilty of a misdemeanor, and be punished by a fine not exceeding \$100, or by imprisonment not exceeding three (3) months.

**History.**

1897, p. 123, § 4; reen. 1899, p. 316, § 4; reen. R.C. & C.L., § 1452; C.S., § 2317; I.C.A., § 43-504; am. 1965, ch. 306, § 4, p. 818.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 44-605. Injunction and damages for infringement.** — Every such person, association or union adopting or using a label, term, design, device or form of advertisement, other than a trademark or a service mark, as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, and may award the complainant in any such suit damages resulting from such manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such persons, association or union, all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court or to the complainant to be destroyed.

### **History.**

1897, p. 123, § 5; reen. 1899, p. 316, § 5; reen. R.C. & C.L., § 1453; C.S., § 2318; I.C.A., § 43-505; am. 1965, ch. 306, § 5, p. 818.

## **CASE NOTES**

Deceptive use of name.

Geographical terms or names.

Secondary meaning.

Unfair competition as fraud.

### **Deceptive Use of Name.**

Where a complaint alleged that the name “United American Benefit Association, Inc.” used by defendant was deceptively similar to the name “American Home Benefit Association, Inc.” used by the plaintiff, and that the general public had been misled and deceived by such deceptive similarity in names and that embarrassment, inconvenience and damage had been suffered by plaintiff as a result thereof, the complaint was not demurrable on the ground that plaintiff could not claim exclusive right to



the use of the word “American” for the reason that it was broadly geographical. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

### **Geographical Terms or Names.**

The use of geographical or descriptive terms to palm off the goods of one manufacturer or vendor as those of another, and to carry on unfair competition, may be lawfully enjoined by a court of equity to the same extent as the use of any other terms or symbols. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

Geographical terms and words descriptive of the character, quality, or places of manufacture or of sale of articles cannot be monopolized as trademarks. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

### **Secondary Meaning.**

If plaintiff proves that the name or word has been so exclusively identified with his goods or business as to have acquired a secondary meaning, so as to indicate his goods or business and his alone, he is entitled to relief against another’s deceptive use of such terms. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

### **Unfair Competition as Fraud.**

The sale of goods of one manufacturer or vendor as those of another is unfair competition and constitutes a fraud which a court of equity may lawfully prevent by injunction. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

**§ 44-606. Penalty for unauthorized use of label.** — Every person who shall use or display the genuine label, term, design, device or form of advertisement, other than a trademark or a service mark, of any such person, association or union, in any manner, not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by fine of not more than \$100.00. In all cases where such association or union is not incorporated, suits under this chapter may be commenced and prosecuted by an officer or members of such association or union on behalf of, and for the use of, such association or union.

**History.**

1897, p. 123, § 6; reen. 1899, p. 316, § 6; R.C. & C.L., § 1454; C.S., § 2319; I.C.A., § 43-506; am. 1965, ch. 306, § 6, p. 818.

**STATUTORY NOTES**

**Effective Dates.**

Section 7 of S.L. 1965, ch. 306 declared an emergency. Approved March 29, 1965.

**§ 44-607. Penalty for unauthorized use of name.** — Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized so to use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars (\$100.00).

**History.**

1897, p. 123, § 7; reen. 1899, p. 316, § 7; reen. R.C. & C.L., § 1455; C.S., § 2320; I.C.A., § 43-507.



## Chapter 7

### INJUNCTIVE RELIEF IN LABOR DISPUTES

Sec.

44-701. Declaration of policy — Collective bargaining.

44-702. Contracts between individual employee and employer for or against union membership barred.

44-703. Injunctions — Restrictions on issuance.

44-704. Immunity from civil or criminal liability — Labor disputes.

44-705. Injunctions — Declaration of policy.

44-706. Injunctions — Grounds — Hearing required — Bond.

44-707. Plaintiff failing to comply with law or bargain in good faith — Injunction refused.

44-708. Injunctions — Findings of fact — Scope of order.

44-709. Review of orders granting or refusing injunction.

44-710. Criminal contempt charged — Rights of accused.

44-711. Punishment for contempt.

44-712. Labor dispute defined.

44-713. Separability.

**§ 44-701. Declaration of policy — Collective bargaining.** — In the interpretation and application of this act, the public policy of this state is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

**History.**

1933, ch. 215, § 1, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first paragraph refers to S. L. 1933, Chapter 215, which is compiled as §§ 44-701 to 44-713.

**CASE NOTES**

[Elections.](#)

[Ex parte review of injunction.](#)

[Norris-LaGuardia Act.](#)

[Public employers.](#)

Suspension of union membership.

Union membership contract.

### **Elections.**

The mandatory requirements of § 44-107 (now § 72-1382), providing for election, rendered the rule by which the director attempted to defeat the holding of an election until after the year had elapsed subsequent to the holding of an initial election, not authorized, beyond his authority and void when a question arose concerning representation of employees in a collective bargaining unit. *Pumice Prods., Inc. v. Robison*, 79 Idaho 144, 312 P.2d 1026 (1957).

The holding of the election as requested and demanded is conformable to the declaration of policy of the labor act as set forth in this section, where employees sought to revoke the authority of a union, after having voted to have a union represent them as a bargaining agent, but no working agreement was ever reached. *Pumice Prods., Inc. v. Robison*, 79 Idaho 144, 312 P.2d 1026 (1957).

### **Ex Parte Review of Injunction.**

The supreme court will not review a temporary injunction, ex parte upon affidavits, in the absence of a certificate by the trial judge to the fact that the action involves a labor dispute. *Boise Grocery Co. v. Stevenson*, 58 Idaho 344, 73 P.2d 947 (1937).

### **Norris-LaGuardia Act.**

This is identical with the federal statute known as Norris-LaGuardia Anti-Injunction Act, 29 U.S.C. § 101 et seq. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

### **Public Employers.**

Sections 44-701 through 44-712 are directed to activities in the private sector and would not apply to a dispute between a public school district and a teachers' association. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

### **Suspension of Union Membership.**

Under *Int'l Assn of Machinists v. Gonzales*, 356 U.S. 617, 78 S. Ct. 923, 2 L. Ed. 2d 1018 (1958), the district court had jurisdiction over action brought by plaintiff to recover judgment for compensatory and punitive damages against defendant labor union for wrongful suspension of plaintiff's membership, such jurisdiction not having been preempted by the Labor Relations Act of 1947. *Lockridge v. Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees of Am.*, 84 Idaho 201, 369 P.2d 1006 (1962).

### **Union Membership Contract.**

Unincorporated associations, including labor unions, are recognized as legal entities under the laws of this state. Therefore, the constitution and by-laws of defendant labor union and the granting and acceptance of membership constitute a contract between the plaintiff employee member and the defendant union. *Lockridge v. Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Employees of Am.*, 84 Idaho 201, 369 P.2d 1006 (1962).

**Cited** *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*, 77 Idaho 514, 297 P.2d 519 (1956); *Watson v. Idaho Falls Consol. Hosps.*, 111 Idaho 44, 720 P.2d 632 (1986).

## **RESEARCH REFERENCES**

**ALR.** — Right of public defenders to join collective bargaining unit. 108 A.L.R.5th 241.

Construction and application of relitigation exception to Anti-Injunction Act, 28 U.S.C. § 2283. 73 A.L.R. Fed. 2d 405.



**§ 44-702. Contracts between individual employee and employer for or against union membership barred.** — Every undertaking or promise hereafter made, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer or any other individual, firm, company, association, or corporation, whereby

(a) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or organizations or to join or to remain a member of some specific employer organization or any employer organization or organizations; and or

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations and or

(c) Either party thereto undertakes or promises that he will withdraw from any employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations,

Is hereby declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence, or threat therefor, either party thereto to act in disregard of such undertaking or promise.

**History.**

1933, ch. 215, § 2, p. 452.

**§ 44-703. Injunctions — Restrictions on issuance.** — No court, nor any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement to do such work or to remain in such employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 44-702[, Idaho Code];

(c) Paying or giving to, or withholding from, any person any strike or unemployment benefits of insurance or other moneys or things of value;

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing to patronize or employ any person or persons;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in section 44-702[, Idaho Code]; and

(k) Doing in concert of any or all the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

**History.**

1933, ch. 215, § 3, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions at the end of subsections (b) and (j) were added by the compiler to conform to the statutory citation style.

**CASE NOTES**

Dispute.

Injunction against picketing.

Jurisdiction of district court.

**Dispute.**

The “dispute” referred to in subdivision (e) of this section means a labor dispute as defined in § 44-712 and not a dispute foreign to the relationship. *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*, 77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

**Injunction Against Picketing.**

Labor union was not deprived of freedom of speech, right of assembly, or due process of law contrary to constitutional provisions, where it was enjoined from picketing and displaying sign which announced that plaintiff's store was unfair to labor union where the employees of the store

did not belong to the union, did not participate in picket line, and were not involved in any labor dispute with the plaintiff. *J.J. Newberry Co. v. Retail Clerks Int'l Ass'n*, 78 Idaho 85, 298 P.2d 375 (1956), rev'd on other grounds, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

State court had jurisdiction of proceedings by corporation and construction company to enjoin picketing of corporation plant by union representing employees of construction company, where picketing was due to the fact that employees of corporation were fabricating tanks being installed by construction company, since no labor dispute was involved. *J.J. Newberry Co. v. Retail Clerks Int'l Ass'n*, 78 Idaho 85, 298 P.2d 375 (1956), rev'd on other grounds, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

### **Jurisdiction of District Court.**

State district court had jurisdiction to enjoin union from picketing of plaintiff's store where employees of the store were not members of the union and were not engaged in any wage dispute with the plaintiff, since there was no labor dispute between plaintiff and its employees within the meaning of that term as defined in § 44-712. *J.J. Newberry Co. v. Retail Clerks Int'l Ass'n*, 78 Idaho 85, 298 P.2d 375 (1956), rev'd on other grounds, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

**Cited** *Poffenroth v. Culinary Workers Union Local No. 328*, 71 Idaho 412, 232 P.2d 968 (1951); *Twin Falls Constr. Co. v. Operating Eng'rs Local No. 370*, 95 Idaho 370, 509 P.2d 788 (1973).

**§ 44-704. Immunity from civil or criminal liability — Labor disputes.**

— No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are herein defined) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, both of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

**History.**

1933, ch. 215, § 4, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**RESEARCH REFERENCES**

**ALR.** — Liability, under statute, of labor union or its membership for torts committed in connection with primary labor activities — State cases, [85 A.L.R.4th 979](#).

**§ 44-705. Injunctions — Declaration of policy.** — In the interpretation and application of sections 44-706 — 44-709, inclusive, the public policy of this state is declared as follows:

Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that

(1) The status quo cannot be maintained but is necessarily altered by the injunction,

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error,

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party, and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

**History.**

1933, ch. 215, § 5, p. 452.

**CASE NOTES**

**Jurisdiction of State Court.**

State court had jurisdiction of proceedings by corporation and construction company to enjoin picketing of corporation plant by union representing employees of construction company, where picketing was due to the fact that employees of corporation were fabricating tanks being installed by construction company, since no labor dispute was involved.

C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council, 77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

**§ 44-706. Injunctions — Grounds — Hearing required — Bond. —**

No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof;

(a) That unlawful acts have been threatened or committed, and will be executed or continued unless restrained;

(b) That substantial or irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That no item of relief granted is relief that a court or judge thereof has no jurisdiction to restrain or enjoin under section 44-703[, Idaho Code];

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property: provided, however, that

If a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than forty-eight (48) hours.



Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and the restraining order shall issue only upon testimony, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided.

Such a temporary restraining order shall be effective for no longer than five (5) days, and at the expiration of five (5) days shall become void and not subject to renewal or extension, provided however that if the hearing for a temporary injunction shall have been begun before the expiration of the said five (5) days the restraining order may, in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

**History.**

1933, ch. 215, § 6, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of paragraph (d) was added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

## CASE NOTES

Complaint.

Evidence.

Labor dispute.

Labor union.

Sufficient proof.

**Complaint.**

The fact that a complaint, otherwise involving a labor dispute, failed to charge that the public officers, whose duty it was to protect the company's property, were unable or failed to do so does not operate to deprive the court of jurisdiction to grant an injunction, where the complaint and proof otherwise showed it to be entitled thereto; and this is true notwithstanding the fact that the existence of a labor dispute was disclosed by the employees' answer. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

**Evidence.**

Where the only testimony tending to show that certain defendants participated in the acts complained of in a labor dispute between a street car company and its employees was based on hearsay, it did not constitute proof of the facts sought to be established and it was error to include the names of such employees in the judgment based on decree of such evidence. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940). However, see *Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836 (1941).

**Labor Dispute.**

After a contract between the employer and an association of employees was canceled and the employer discharged eight of the employees, a strike

resulted therefrom: this constituted a labor dispute within the meaning of the statute, requiring findings of fact before the employer could obtain injunctive relief. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

### **Labor Union.**

The fact that the employer's attorney assists the men in drawing up articles perfecting their organization, if he acts in good faith toward the employees, does not disqualify the association from being a labor union within the meaning of the statute. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

The fact that a member of an association made a motion for an increase of wages, which was seconded and was not put to a vote, cannot be relied on by the employer to show that the association was not a legitimate labor union, organized and operated in the interest of its members. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

### **Sufficient Proof.**

Where there is a strike by street car company employees, tying up the street car company's operations, and the employees attempt to operate so-called "courtesy cars" over the same routes that the street car company had theretofore operated its cars, for which no charge was made but contributions were invited in receptacles placed in such courtesy cars, that is sufficient to warrant the court in granting injunctive relief to protect the street car company's franchise; but the injunction will be strictly construed to avoid invasion of the rights of the employees' lawful use of streets for the purpose of publicizing the issues involved in the labor dispute. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

**Cited** *Poffenroth v. Culinary Workers Union Local No. 328*, 71 Idaho 412, 232 P.2d 968 (1951).

## **RESEARCH REFERENCES**

**ALR.** — Increase, or promise of increase or withholding of increase, of wages as unfair labor practice under state labor relations acts. 34 A.L.R.6th 327.

**§ 44-707. Plaintiff failing to comply with law or bargain in good faith — Injunction refused.** — No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make very [every] reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of such tribunal if irreparable injury is threatened.

**History.**

1933, ch. 215, § 7, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to supply the probable intended term.

**§ 44-708. Injunctions — Findings of fact — Scope of order.** — No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employees and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

**History.**

1933, ch. 215, § 8, p. 452.

**CASE NOTES**

**Injunction.**

Before any acts can be enjoined in a labor dispute under this and cognate sections of the statute, it should appear that such acts were set forth in the complaint and in the findings of fact, and where no reference was made in the complaint or findings to picketing or acts of violence, or threatened violence or intimidation, and there was no evidence to support the portions of the decree relating thereto, the inclusion in the decree of the portions referring to such acts was erroneous. *Boise St. Car Co. v. Van Avery*, 61 Idaho 502, 103 P.2d 1107 (1940).

**§ 44-709. Review of orders granting or refusing injunction. —**  
Whenever any court or judge or judges thereof shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of such record in the appropriate appellate court the appeal shall be heard with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

**History.**

1933, ch. 215, § 9, p. 452.

**§ 44-710. Criminal contempt charged — Rights of accused.** — In all cases where a person shall be charged with direct criminal contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy,

(a) The rights as to admission to bail that are accorded to persons accused of crime.

(b) The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court,

(c) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court, and

(d) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated by the presiding judge of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

**History.**

1933, ch. 215, § 10, p. 452.

**§ 44-711. Punishment for contempt.** — Punishment for a contempt, specified in section 44-710[, Idaho Code], may be by fine, not exceeding one hundred dollars (\$100), or by imprisonment not exceeding fifteen (15) days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, he must be discharged at the expiration of fifteen (15) days; but where he is also committed for a definite time, the fifteen (15) days must be computed from the expiration of the definite time.

**History.**

1933, ch. 215, § 11, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.



**§ 44-712. Labor dispute defined.** — The term “labor dispute” means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.

**History.**

1933, ch. 215, § 12, p. 452; am. 1947, ch. 266, § 1, p. 789.

**CASE NOTES**

Application of section.

Constitutionality.

Dispute.

Existence of labor dispute.

**Application of Section.**

This section could not be applied, in action for damages against labor organization for alleged contractual interference, to establish that picketing complained of was unlawful; neither could this section be construed to supplement plaintiffs’ alleged right to damages under § 8(b)(4) of the National Labor Relations Act, 29 USCS § 158(b)(4). *Simpkins v. Southwestern Idaho Painters Dist. Council No. 57*, 95 Idaho 165, 505 P.2d 313 (1973).

**Constitutionality.**

Union enjoined from picketing boarding house of plaintiffs could not attack constitutionality of this section based upon discrimination against minority of employees, where employees affected did not belong to the union and did not join in attack on constitutionality. *Poffenroth v. Culinary Workers Union Local No. 328*, 71 Idaho 412, 232 P.2d 968 (1951).

The contention by a union that this section is unconstitutional on the ground that the law fails to protect minorities could not be upheld where the union involved did not represent any of the employees involved in the dispute. *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*,

77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

### **Dispute.**

The dispute referred to in subdivision (e) of § 44-703 means a labor dispute as defined in this section and not a dispute foreign to the relationship. *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*, 77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

### **Existence of Labor Dispute.**

Where the majority of the employees of a store withdrew from union membership and the union thereupon disclaimed any right to represent the employees of the store as bargaining agent, but picketed the store as being "non-union," before trying an action by the employer to enjoin picketing and for damages, the district court should petition the national labor relations board for an advisory opinion as to whether it would accept or decline jurisdiction. *Cox's Food Ctr., Inc. v. Retail Clerks Union, Local No. 1653*, 91 Idaho 274, 420 P.2d 645 (1966).

**Cited** *Twin Falls Constr. Co. v. Operating Eng's Local No. 370*, 95 Idaho 370, 509 P.2d 788 (1973).

**§ 44-713. Separability.** — If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

**History.**

1933, ch. 215, § 13, p. 452.

**STATUTORY NOTES**

**Compiler's Notes.**

The terms “this act” and “the act” refer to S.L. 1933, Chapter 215, which is codified as §§ 44-701 to 44-713.



## Chapter 8

### SECONDARY BOYCOTT ACT

Sec.

44-801. Secondary boycott.

44-802. Penalty.

44-803. Short title.

**§ 44-801. Secondary boycott.** — It shall be unlawful to cause or threaten to cause, and/or combine or conspire to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by (a) withholding patronage, labor, or other beneficial business intercourse; (b) picketing; (c) refusing to handle, install, use or work on particular materials, equipment or supplies; or (d) by any other means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom such labor dispute exists to comply with any particular demands.

**History.**

1947, ch. 265, § 1, p. 788.

**CASE NOTES**

Constitutional guaranties.

Injunction against.

**Constitutional Guaranties.**

Freedom of speech and press guaranteed by the state and federal constitution did not protect a labor union where its activities resulted in a secondary boycott. *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*, 77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

**Injunction Against.**

Union which represented employees of a construction company was guilty of engaging in a secondary boycott, where it established a picket line at entrance to a corporation plant where construction company was engaged on a job because employees of the corporation who belonged to another union were doing fabrication work on a tank being installed by the

construction company, and such picketing could be enjoined. *C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council*, 77 Idaho 514, 297 P.2d 519, rev'd on other grounds, 352 U.S. 884, 77 S. Ct. 130, 1 L. Ed. 2d 82 (1956), on authority of *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 546 (1955), holding dispute within jurisdiction of national labor relations board in first instance.

**Cited** *Simpkins v. Southwestern Idaho Painters Dist. Council No. 57*, 95 Idaho 165, 505 P.2d 313 (1973).

**§ 44-802. Penalty.** — Any person, firm, individual, corporation, labor organization or association of persons found guilty of committing, or causing to be committed, any of the acts herein declared to be unlawful, shall be deemed guilty of misdemeanor.

**History.**

1947, ch. 265, § 2, p. 788.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**CASE NOTES**

**Cited** C.H. Elle Constr. Co. v. Pocatello Bldg. & Constr. Trades Council, 78 Idaho 1, 297 P.2d 519 (1956).



Idaho Code § 44-803

**§ 44-803. Short title.** — This act may be cited as “The Secondary Boycott Act.”

**History.**

1947, ch. 265, § 3, p. 788.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1947, Chapter 265, which is compiled as §§ 44-801 to 44-803.



## Chapter 9

### EMPLOYMENT CONTRACTS

Sec.

44-901. Anti-union contracts prohibited.

44-902. Contracts restricting board and lodging prohibited.

44-903. Polygraph tests prohibited.

44-904. Polygraph tests — Exclusions.

44-905. Franchise agreements — Employment status.

**§ 44-901. Anti-union contracts prohibited.** — It shall be unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization. Any person or persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars (\$50.00) nor more than \$300, or be imprisoned in the county jail for not more than six (6) months, or shall be punished by both such fine and imprisonment.

**History.**

1893, p. 152, §§ 1, 2; reen. 1899, p. 221, §§ 1, 2; am. R.C., § 1456; reen. C.L., § 1456; C.S., § 2321; I.C.A., § 43-601.

**STATUTORY NOTES**

**Cross References.**

Collective bargaining, § 44-701.

**§ 44-902. Contracts restricting board and lodging prohibited.** — It shall be unlawful for any employer, by himself or by his agent, or for any agent of any employer, or for any other person, directly or indirectly, to impose as a condition, express or implied, in or for the employment of any workman or employee, any terms as to the place at which, or the person with whom any workman or employee is to board, lodge, subsist or reside; or as to the place or store at which he shall purchase his goods, wares or merchandise; or as to the place at which, or the manner in which, or the person with whom any wages or portion of wages paid to the workman or employee are or is to be expended; and no employer shall, by himself or his agent, nor shall any agent of any employer dismiss any workman or employee from his employment for or on account of the place at which, or the person with whom such workmen or employee may board, lodge, subsist or reside; or as to the place or store at which he shall purchase his goods, wares and merchandise; or for or on account of the place at which, or the person with whom any wages or portion of wages paid by the employer to such workman or employee are or is expended, or fail to be expended: provided, that this shall not apply to the collection of hospital fees or dues.

Any employer, who by himself or by his agent, or any agent of any employer, or any other person, who shall violate any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$100 nor to exceed \$300, or be imprisoned in the county jail for not less than thirty (30) days nor to exceed ninety (90) days, or shall suffer both such fine and imprisonment.

**History.**

1911, ch. 123, §§ 1, 2, p. 385; reen. C.L., § 1456a; C.S., § 2322; I.C.A., § 43-602.

**§ 44-903. Polygraph tests prohibited.** — No person, firm, corporation or other business entity or representative thereof, shall require as a condition for employment or continuation of employment any person or employee to take a polygraph test or any form of a so-called lie detector test. A violation of this section shall constitute a misdemeanor.

**History.**

1973, ch. 279, § 1, p. 594.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**§ 44-904. Polygraph tests — Exclusions.** — The provisions of this act shall not apply to any law enforcement agency of the United States of America, the state of Idaho, or any political subdivision or governmental entity thereof.

**History.**

1973, ch. 279, § 2, p. 594.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1973, Chapter 279, which is compiled as §§ 44-903 and 44-904.

**§ 44-905. Franchise agreements — Employment status.** — (1) For purposes of this section, “franchise agreement,” “franchisee” and “franchisor” shall have the same meanings as provided in [section 29-110, Idaho Code](#).

(2) Neither a franchisee nor an employee of a franchisee shall be considered an employee of the franchisor for any purpose, unless:

- (a) The franchisee or the employee of a franchisee is specifically described as an employee of the franchisor in the franchise agreement; or
- (b) The franchisor is found or has been found by a court or another tribunal to have exercised a type or degree of control over the franchisee or the franchisee’s employee that is not customarily exercised by a franchisor.

**History.**

[I.C., § 44-905](#), as added by 2018, ch. 215, § 1, p. 485.





## Chapter 10

### PUBLIC WORKS

Sec.

44-1001. Employment of residents of Idaho — Wage scale — Federal funds.

44-1002. Terms of employment and wage contracts.

44-1003. Definitions of terms used.

44-1004. Penalty for violating law.

44-1005. Employment of aliens on public works prohibited — Exception.

44-1006. Determining prevailing wages as paid in county seat of county in which work is being performed. [Repealed.]

**§ 44-1001. Employment of residents of Idaho — Wage scale — Federal funds.** — In all state, county, municipal, and school construction, repair, and maintenance work under any of the laws of this state the contractor, or person in charge thereof must employ ninety-five percent (95%) bona fide Idaho residents as employees on any such contracts except for procurement authorized in [section 67-2808\(2\), Idaho Code](#), or where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided however, in such a case employers must give preference to the employment of bona fide Idaho residents in the performance of such work; provided, that in work involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged members of the United States armed forces, including airmen, soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

### **History.**

1933, ch. 111, § 1, as added by 1935, ch. 140, § 1, p. 346; am. 1939, ch. 33, § 1, p. 70; am. 1985, ch. 3, § 1, p. 7; am. 2013, ch. 344, § 1, p. 928; am. 2014, ch. 149, § 1, p. 412.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 344, inserted “for procurement authorized in [section 67-2808\(2\), Idaho Code](#), or” and substituted “in such a case” for “in all cases such” near the middle of the section.

The 2014 amendment, by ch. 149, inserted “members of the United States armed forces, including airmen” near the end of the section.

### **Compiler’s Notes.**

The term “this act” near the end of the section refers to S.L. 1933, Chapter 111, which is compiled as §§ 44-1001 to 44-1004.

S.L. 1935, ch. 140, p. 346 purported to amend S.L. 1933, ch. 111 in its entirety. In so doing, it inserted an entirely new section and numbered it § 1. It then reenacted § 1 of the 1933 act but numbered it § 2.

Former § 2 of the 1933 act was reenacted but was renumbered as § 3.

Former § 3 of the 1933 act was amended by deleting a provision for the retention of \$500 as liquidated damages for the violation of the terms of the contract and made failure to comply with the act a misdemeanor. Former § 3 was renumbered as § 4.

Former § 4 of the 1933 act was reenacted and renumbered as § 5.

Former § 5 of the 1933 act was reenacted and renumbered as § 6. It repealed all conflicting laws.

Former § 6 of the 1933 act was reenacted and renumbered as § 7. It declared an emergency.

**§ 44-1002. Terms of employment and wage contracts.** — In all contracts hereafter let for state, county, municipal, and school construction, repair, and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it; provided, that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States.

**History.**

1933, ch. 111, § 1 [2], p. 176; reen. 1935, ch. 140, § 1, p. 346; am. 1939, ch. 33, § 2, p. 70; am. 1985, ch. 3, § 2, p. 7.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1933, Chapter 111, which is compiled as §§ 44-1001 to 44-1004.

**Effective Dates.**

Section 4 of S.L. 1985, ch. 3 declared an emergency. Became law without governor's signature, February 11, 1985.

**§ 44-1003. Definitions of terms used.** — Labor is hereby defined to be all services performed in the construction, repair, or maintenance of all state, county, municipal, and school work.

A bona fide resident of Idaho is hereby declared to be a person, who, at the time of his said employment and immediately prior thereto, has resided in this state for not less than one (1) year.

**History.**

1933, ch. 111, § 2 [3], p. 176; reen. 1935, ch. 140, § 1, p. 346; am. 1939, ch. 33, § 3, p. 70.

**STATUTORY NOTES**

**Compiler's Notes.**

The title of the 1939 act does not refer to this section in the title, although it was so amended in the body of the act.

**§ 44-1004. Penalty for violating law.** — If any person, firm or corporation shall fail to comply with the provisions of this act he shall be guilty of a misdemeanor.

**History.**

1933, ch. 111, § 3 [4], p. 176; am. 1935, ch. 140, § 1, p. 346.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1933, Chapter 111, which is compiled as §§ 44-1001 to 44-1004.

Session Laws 1933, ch. 111, § 4[5], 1935, ch. 140, § 1, and 1939, ch. 33, § 4 each carried the following separability clause: “If any part of this act shall be held to be unconstitutional such decision shall not affect the validity of any other provisions of this act.” Said section is applicable to sections 44-1001 to 44-1004.

**Effective Dates.**

Session Laws 1933, ch. 111, § 6[7]; 1935, ch. 140, § 1 and 1939, ch. 33, § 5, each declared an emergency.

**§ 44-1005. Employment of aliens on public works prohibited — Exception.** — No person not a citizen of the United States, or who has not declared his intention to become such, or who is not eligible to become such, shall be employed upon any state or municipal works; nor shall any such person be employed by any contractor to work on any public works of the state or any municipality: provided, that any state prisoner may be employed within the state prison grounds and as provided in section 3, **article 13, of the constitution**. Any person who shall violate any of the provisions of this section, on conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than \$100 for each person so employed, or by imprisonment in the county jail until such fine be paid or until discharged as provided by law.

**History.**

1890-1891, p. 233, §§ 1, 2; reen. 1899, p. 70, §§ 3, 4; reen. R.C. & C.L., § 1457; C.S., § 2323; I.C.A., § 43-603.

**STATUTORY NOTES**

**Cross References.**

Aliens not to be employed on public work, Idaho **Const., Art. XIII, § 5**.

**Compiler's Notes.**

Compiled Laws contained this note: "In the opinion of the commissioner this section is unconstitutional under **Re Case (1911), 20 Idaho 128, 116 P. 1037**, but that case mentions only R.C., § 1458, which was originally enacted S.L. 1897, p. 5, § 1. R.C., §§ 1459-1460, which were §§ 2 and 3 respectively of the act of 1897, necessarily fall with § 1458. Section 1457 was a reenactment of S.L. 1890-1891, p. 233, upon the validity of which the court did not pass. Inasmuch as there is still a question as to whether that portion of § 1457 relating to the employment directly by the state is valid, it is deemed proper to retain it in this compilation."

Idaho **Const., Art. XIII, § 3** referred to in the first sentence of this section was repealed by the electorate at the 1912 general election.



## RESEARCH REFERENCES

**ALR.** — Preemption of state statute, law, ordinance, or policy with respect to employment and education-related issues involving aliens. 88 A.L.R.6th 627.

**§ 44-1006. Determining prevailing wages as paid in county seat of county in which work is being performed. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

This section, which comprised I.C., § 44-1006 as added by 1955, ch. 53, § 1, p. 77; am. 1965, ch. 202, § 1, p. 455; am. 1974, ch. 39, § 60, p. 1023, was repealed by S.L. 1985, ch. 3, § 3.



## Chapter 11

### DAY'S WORK

Sec.

44-1101 — 44-1109. [Repealed.]

**§ 44-1101 — 44-1103. Public work — Contracts — Eight hour day — Exceptions — Wage rate — Penalty for false certificate. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1899, §§ 1, 2, p. 113; reen. R.C., §§ 1451, 1462; 1911, ch. 131, §§ 1 to 3, pp. 417, 418; am. 1913, ch. 165, §§ 1, 2, pp. 533, 534; reen. C.L., §§ 1461, 1462, 1462a; C.S., §§ 2324 to 2326; am. 1923, ch. 93, § 1, p. 111; I.C.A., §§ 43-701 to 43-703, were repealed by S.L. 1985, ch. 3, § 3.

**§ 44-1104 — 44-1107. Mines — Smelters — Eight hours a day's work — Penalty for violating act — Female employees. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1996, ch. 123, § 1, effective March 8, 1996:

44-1104. (1907, p. 97, § 1; reen. R.C. & C.L. § 1463; C.S. § 2327; am. 1935, ch. 74, § 1, p. 129; I.C.A., § 43-704; am. 1985, ch. 245, § 1, p. 576; am. 1994, ch. 367, § 1, p. 1179).

44-1105. (1907, p. 97, § 2; reen. R.C. § 1464; am. 1909, p. 4, § 1; reen. C.L., § 1464; C.S., § 2328; I.C.A., § 43-705; am. 1985, ch. 245, § 2, p. 576).

44-1106. (1907, p. 97, § 3; reen. R.C. & C.L., § 1465; C.S., § 2329; I.C.A., § 43-706).

44-1107. (1913, ch. 86, § 1, p. 360; compiled and reen. C.L., § 1466; C.S., § 2330; I.C.A., § 43-707; am. 1963, ch. 281, § 1, p. 724) previously superseded by §§ 18-7303, 44-1703, and 67-5909, on authority of *Idaho Trailer Coach Ass'n v. Brown*, 95 Idaho 910, 523 P.2d 42 (1974).

**§ 44-1108, 44-1109. Female employees — Seats to be furnished — Act to be posted — Penalty for violation. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

These sections, which comprised 1918, ch. 86, §§ 2, 3, p. 360; reen. C.L., §§ 1467, 1468; C.S., §§ 2231, 2232; I.C.A., §§ 43-708, 43-709, were repealed by S.L. 1985, ch. 245, § 3.





## Chapter 12

### HOURS WORKED ACT

Sec.

44-1201. Declaration of state policy.

44-1202. Hours of work and compensable time — Determination.

44-1203. Compensable pay provisions unaffected.

44-1204. Short title.

**§ 44-1201. Declaration of state policy.** — As a guide to the interpretation and application of this act the public policy of this state is declared to be as follows: The financial and economic stability of the state of Idaho and its citizens is threatened by the filing of, and threats to file, lawsuits to recover for nonproductive labor performed during the war, which is a serious menace to the health, morals, and welfare of the people of this state and is a sufficient basis for invoking the police power of the state; that it is contrary to the public policy of the state of Idaho for persons now to sue for attorneys' fees, liquidated damages, and alleged overtime for nonproductive work performed during the war; that it is the policy of this state that when persons have once agreed to what constitutes compensable time spent in employment and employers have paid the same and employees have accepted payment on the basis of the agreement, that such agreement, payments and acceptance should be accepted as final; that the prospect of large sums being recovered as attorneys' fees, liquidated damages, and unpaid overtime from employers who would then have claims against the state for income tax refunds, and the possible bankruptcy of many persons, firms and corporations, who, otherwise would pay to the state large sums as income and other excise taxes, threatens our social security payments, our educational expansion program, and endangers teachers salaries, workmen's compensation benefits, unemployment compensation benefits, and all the activities of the state, and would create a serious condition of unemployment, all to the irreparable damage and injury to all of our people; that this situation is so serious that the power inherent in the state to protect itself through its police power should be and hereby is invoked to limit and define what has and shall constitute hours worked in all suits and actions for attorneys' fees, liquidated damages, back wages, overtime pay, penalties and/or damages where wages and salaries have been paid and accepted.

**History.**

1947, ch. 267, § 1, p. 789.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1947, Chapter 267, which is compiled as §§ 44-1201 to 44-1204.

**§ 44-1202. Hours of work and compensable time — Determination.**

— In any and all suits, actions and court proceedings, whether now pending or hereafter instituted, for attorneys' fees, liquidated damages, back or unpaid wages, salaries or compensation for work or labor performed in Idaho, where wages or salaries have been paid to any employee for a pay period, and such employee claims additional salary, wages, overtime compensation, penalties, liquidated damages or attorneys' fees because of work done and services performed during his employment for the pay period covered by such payment, the following is and shall be the definition of "hours worked," and of time put in for which attorneys' fees, liquidated damages, back or unpaid wages, salaries, or compensation may be recovered:

In determining "hours worked" or compensable time for which recovery may be had in such actions for attorneys' fees, liquidated damages, back or unpaid wages, salaries or compensation, the following rules shall be applied: (1) Wherever the custom or practice of a business, industry, plant, mine, factory or place of work has established the amount of noncompensable time to be spent by an employee in travelling to and from the place of work, in preparing for productive work, in changing clothes before and after a shift, taking showers, securing and returning tools and equipment, in no event shall time so spent be deemed, held or considered to be time or hours worked; (2) Wherever time spent traveling to or from the place of work, and the preliminary preparation for productive work, and time spent after a regular shift in preparing to leave the place of work, has been taken into consideration in fixing the rate of pay, it shall not be deemed, held or considered to be time or hours worked; (3) In no event shall any of the following be deemed, held or considered as time or hours worked: (a) Time spent before beginning of shift in checking in; (b) Time spent in going to or returning from lunch;

(c) Time spent in change room, taking showers, changing clothes, securing tools and equipment; (d) Time spent before actual shift starts in receiving instructions; (e) Time spent on employers' property after end of shift; (f) Time spent after end of shift in returning tools and equipment, receiving or giving orders, and making reports; (g) Time spent in

traveling to or from the place of work; (h) Time spent in waiting in line for payment of wages or salaries; (i) Time spent in any incidental activities before or after work, which may involve activities which are excluded from compensable work time by industry practice, custom or agreement.

### **History.**

1947, ch. 267, § 2, p. 789.

## **CASE NOTES**

### **Accident While Driving to Work.**

Where at the time of the accident driver of automobile was neither an agent, employee nor servant of a specific company, but was merely driving toward a town in an effort to report for work and the use and operation of his automobile in that effort was entirely his choice and under his complete control, he was not a person employed by another person who was responsible for his conduct within the wrongful death statute: the prospective employer not being liable for any negligence on the part of a driver while driving toward the place of intended employment. *Lallatin v. Terry*, 81 Idaho 238, 340 P.2d 112 (1959).

**§ 44-1203. Compensable pay provisions unaffected.** — Nothing contained in this act shall be construed as preventing the recovery of any wages, salaries, overtime compensation, liquidated damages or attorneys' fees, where salaries or wages have not been paid for a pay period, nor as preventing an employer and an employee from agreeing in writing as to what shall constitute hours worked or time spent for which compensation shall be paid, and on which overtime compensation shall be paid.

**History.**

1947, ch. 267, § 3, p. 789.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" near the beginning of the section refers to S.L. 1947, Chapter 267, which is compiled as §§ 44-1201 to 44-1204.

**§ 44-1204. Short title.** — This act may be referred to as the “Idaho Hours Worked Act.”

**History.**

1947, ch. 267, § 4, p. 789.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in this section refers to S.L. 1947, Chapter 267, which is compiled as §§ 44-1201 to 44-1204.

**Effective Dates.**

Section 5 of S.L. 1947, ch. 267 declared an emergency. Approved Mar. 19, 1947.





## Chapter 13

### CHILD LABOR LAW

Sec.

44-1301. Restrictions on employment of children under fourteen.

44-1302. Children under sixteen — Educational requirements.

44-1303. Employers to keep record of minor employees.

44-1304. Working hours for children under sixteen.

44-1305. Penalty for violations of chapter.

44-1306. Prohibition against theatrical employment of children — Penalty  
— Exception.

44-1307. Employment of minors in immoral surroundings.

44-1308. Probation officers and school trustees to bring complaint.

**§ 44-1301. Restrictions on employment of children under fourteen.**

— No child under fourteen (14) years of age shall be employed, permitted or suffered to work in or in connection with any mine, factory, workshop, mercantile establishment, store, telegraph or telephone office, laundry, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages. It shall be unlawful for any person, firm or corporation to employ any child under fourteen (14) years of age in any business or service whatever during the hours in which the public schools of the district in which the child resides are in session, or before the hour of six o'clock in the morning, or after the hour of nine o'clock in the evening: provided, that any child over the age of twelve (12) years may be employed at any of the occupations mentioned in this chapter during the regular vacations of two (2) weeks or more of the public schools of the district in which such child resides. Provided however, a student may be employed by the public schools of the district for a maximum of ten (10) hours per week provided such employment is voluntary and with the consent of the student's legal guardian.

**History.**

1907, p. 248, § 1; am. R.C., § 1466; am. 1911, ch. 159, § 166, p. 483; am. C.L. 38:280; C.S., § 1024; I.C.A., § 43-801; am. 2011, ch. 199, § 1, p. 581.

**STATUTORY NOTES**

**Cross References.**

Child labor in mines prohibited, Idaho [Const., Art. XIII, § 4](#).

**Amendments.**

The 2011 amendment, by ch. 199, added the last sentence.

**§ 44-1302. Children under sixteen — Educational requirements. —**

No minor who is under sixteen (16) years of age shall be employed or permitted to work at any gainful occupation during the hours that the public schools of the school district in which he resides are in session, unless he can read at sight and write legibly simple sentences in the English language, and has received instructions in spelling, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions, or has similar attainments in another language.

**History.**

1907, p. 248, § 2; reen. R.C., § 1467; am. 1911, ch. 159, § 167, p. 483; reen. C.L. 38:281; C.S., § 1025; I.C.A., § 43-802.

**STATUTORY NOTES**

**Cross References.**

Compulsory education law, § 33-201 et seq.

**§ 44-1303. Employers to keep record of minor employees.** — Every person, firm, corporation, agent or officer of a firm or corporation employing or permitting minors under sixteen (16) years of age and over fourteen (14) years of age to work in any mine, factory, workshop, mercantile establishment, store, telegraph or telephone office, laundry, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, shall keep a record of the names, ages, and place [places] of residence of such minors.

**History.**

1907, p. 248, § 3; reen. R.C., § 1468; am. 1911, ch. 159, § 168, p. 483; reen. C.L. 38:282; C.S., § 1026; I.C.A., § 43-803.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to grammatically correct the sentence.

**§ 44-1304. Working hours for children under sixteen.** — No person under the age of sixteen (16) years shall be employed or suffered or permitted to work at any gainful occupation more than fifty-four (54) hours in any one week, nor more than nine (9) hours in any one day; nor before the hour of six o'clock in the morning nor after the hour of nine o'clock in the evening.

**History.**

1907, p. 248, § 4; reen. R.C., § 1469; reen. 1911, ch. 159, § 169, p. 483; reen. C.L. 38:283; C.S., § 1027; I.C.A., § 43-804.

**CASE NOTES**

Jurisdiction over claim.

Protection of section.

Relationship created.

**Jurisdiction over Claim.**

The industrial accident board had exclusive jurisdiction of claim for injuries sustained by a minor aged 15 while working for a lumber company. *Lockard v. St. Maries Lumber Co.*, 76 Idaho 506, 285 P.2d 473 (1955).

**Protection of Section.**

This section was not violated where minor aged 16 worked 12 hours on night shift, since this section protects only minors under 16. *Shirts v. Shultz*, 76 Idaho 463, 285 P.2d 479 (1955).

**Relationship Created.**

Employment of minor, though in violation of the child labor law, is not void. *Lockard v. St. Maries Lumber Co.*, 76 Idaho 506, 285 P.2d 473 (1955).

**§ 44-1305. Penalty for violations of chapter.** — Whoever employs a child under sixteen (16) years of age, and whoever having under his control a child under such age permits such child to be employed in violation of sections 44-1301 and 44-1302[, Idaho Code,] shall, for such offense, be fined not more than fifty dollars (\$50.00), and whoever continues to employ any child in the violation of either of said sections after being notified by a truant officer, probation officer or school authority shall, for every day thereafter that such employment continues, be fined not less than five dollars (\$5.00) nor more than twenty dollars (\$20.00). A failure to produce to a truant officer, policeman, probation officer or school authority, the age record required by this chapter shall be prima facie evidence of the illegal employment of any person whose age record is not produced. Any parent, guardian or custodian of a minor under sixteen (16) years of age who knowingly swears falsely as to the age of such child for the purpose of obtaining an age record is guilty of perjury.

**History.**

1907, p. 248, § 5; reen. R.C., § 1470; reen. 1911, ch. 159, § 170, p. 483; reen. C.L. 38:284; C.S., § 1028; I.C.A., § 43-805.

**STATUTORY NOTES**

**Cross References.**

Punishment for perjury, § 18-5409.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

**§ 44-1306. Prohibition against theatrical employment of children — Penalty — Exception.** — Any person, whether as parent, relative, guardian, employer or otherwise, having the care, custody or control of any child under the age of sixteen (16) years, who exhibits, uses or employs in any manner or under any pretense, sells, apprentices, gives away, lets out or disposes of such child to any person, under any name, title or pretense, for or in any business, exhibition or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging or peddling, or as a gymnast, acrobat, or contortionist, or rider, or in any place whatsoever, or for any obscene, indecent or immoral purposes, exhibition or practice whatsoever, or for or in any mendicant, or wandering business whatsoever, or who causes, procures or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars (\$50.00) nor more than \$250, or by imprisonment in the county jail for a term not exceeding six (6) months or by both such fine and imprisonment. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody any child under the age [of sixteen (16) years] and for any of the purposes mentioned in this section is guilty of a like offense and punishable by like imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child as a singer or musician in any church, school or academy, or the teaching or learning of the science or practice of music.

**History.**

1907, p. 248, § 6; reen. R.C., § 1471; reen. 1911, ch. 159, § 171, p. 483; reen. C.L. 38:285; C.S., § 1029; I.C.A., § 43-806.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed words “of sixteen (16) years” were inserted by the compiler to clarify the term “the age.”

**§ 44-1307. Employment of minors in immoral surroundings.** — Any person, whether as parent, guardian, employer or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct, or cause to be sent or directed any minor, to any saloon, gambling house, house of prostitution or other immoral place; or who shall employ any minor to serve intoxicating liquors to customers, or who shall employ a minor in handling intoxicating liquor or packages containing such liquors in a brewery, bottling establishment or other place where such liquors are prepared for sale or offered for sale, shall, for each offense, be punished by a fine of not less than fifty dollars (\$50.00) or imprisonment for not less than two (2) months, or by both such fine and imprisonment.

**History.**

1907, p. 248, § 7; reen. R.C., § 1472; reen. 1911, ch. 159, § 172, p. 483; reen. C.L. 38:286; C.S., § 1030; I.C.A., § 43-807.



**§ 44-1308. Probation officers and school trustees to bring complaint.**

— The probation officer, or in counties where there is no probation officer, one or more of the school trustees shall visit the various places of employment mentioned in sections 44-1301 and 44-1307[, Idaho Code,] and ascertain whether any minors are employed therein contrary to the provisions of this chapter, and they shall bring complaint for offenses under this chapter to the attention of the prosecuting attorney for prosecution, but nothing herein shall be held to prohibit any reputable citizen from bringing complaint for violations of this chapter. All offenses under this chapter shall be prosecuted in the probate court [district court].

**History.**

1907, p. 248, § 8; am. R.C., § 1473; reen. 1911, ch. 159, § 173, p. 483; reen. C.L. 38:287; C.S., § 1031; I.C.A., § 43-808.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the first sentence was added by the compiler to conform to the statutory citation style.

The bracketed words “district court” were inserted by the compiler since the probate court was abolished and its jurisdiction transferred to the district court by S.L. 1969, ch. 100, § 1, which is compiled as § 1-103.



## Chapter 14

### EMPLOYERS' LIABILITY ACT

Sec.

44-1401. Cases where employer deemed liable — Assumption of risk by employee.

44-1402. Employee's knowledge of defect or negligence — When employer excused thereby.

44-1403. Employee's knowledge of incompetency of coemployee — When employer excused thereby.

44-1404. Injury or death of minor — Who may maintain action.

44-1405. Death of adult employee — Who may maintain action.

44-1406. Damages in case of death — Maximum amount — Exemption from debts of deceased.

44-1407. Notice prerequisite to maintenance of action.

**§ 44-1401. Cases where employer deemed liable — Assumption of risk by employee.** — Every employer of labor in or about a railroad, street railway, factory, workshop, warehouse, mine, quarry, engineering work, and any building which is being constructed, repaired, altered, or improved, by the use and means of a scaffold, temporary staging, or ladders or is being demolished, or on which machinery driven by steam, water or other mechanical power is being used for the purpose of construction, repair or demolition thereof, shall be liable to his employee or servant for a personal injury received by such servant or employee in the service or business of the master or employer within this state when such employee or servant was at the time of the injury in the exercise of due care and diligence in the following cases:

1. When the injury was caused by reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition.

2. When the injury was caused by reason of the negligence of any person in the service of the employer entrusted with and exercising superintendence whose sole or principal duty is that of superintendence, or in the absence of such superintendent, of any person acting as superintendent with the authority and consent of such employer.

3. When such injury was caused by reason of the act or omission of any person in the service or employment of the master or employer, done or made in obedience to the rules and regulations or by-laws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer so to instruct.

4. When such injury was caused by the negligence of any person in the service or employment of the master or employer who has charge of any signal or telegraph office directing the movement of any locomotive engine, train or car upon a railroad, or any part thereof, at the time such person was injured.

5. That [in] any action brought against any employer or master under or by virtue of any of the provisions of this chapter to recover damages for injuries to or death of any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where a violation by such employer or master of any statute enacted for the safety of employees contributed to the injury or death of such employee.

6. An employee, by entering upon or continuing in the service of the employer, shall be presumed to have assented to the necessary risks of the occupation or employment, and no others. The necessary risks of the occupation or employment shall, in all cases arising after this chapter takes effect, be considered as including those risks, and those only, inherent in the nature of the business, which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees.

**History.**

1909, p. 34, 1st par. of § 1; I.C.A., § 43-2001.

**STATUTORY NOTES**

**Cross References.**

Vocational rehabilitation of persons disabled in industry, § 33-2301 et seq.

**Compiler's Notes.**

The bracketed word “in” in paragraph 5 was inserted by the compiler to supply the probable intended term.

This chapter was omitted from Compiled Laws and Compiled Statutes. It is to a large extent superseded by the workers' compensation law, but it may still be applicable in some cases. See §§ 72-201, 72-203, 72-209 and 72-212.

**CASE NOTES**

[Application of chapter.](#)

Assumption of risk.

Negligence of employer.

### **Application of Chapter.**

This chapter was intended to extend the rights of employees and limit the rights of employers in personal injury cases. *Chiara v. Stewart Min. Co.*, 24 Idaho 473, 135 P. 245 (1913).

This chapter does not govern every case of employer's liability for injury to employees, but is applicable only to specific cases enumerated in the chapter. *Sumey v. Craig Mountain Lumber Co.*, 27 Idaho 721, 152 P. 181 (1915).

Where employee was injured while piling logs delivered at a point six miles from employer's sawmill, he could not recover under this chapter, although logs were to be conveyed to employer's mill and there converted into lumber. *Sumey v. Craig Mountain Lumber Co.*, 27 Idaho 721, 152 P. 181 (1915).

Where an employee was injured when his leg was pinned between a potato piler and a tractor drawn scraper unit as the employee was working in a cellar in which potatoes were stored on employer's farm, employee's cause of action arose not from an injury received in a warehousing operation but from an injury received in an agricultural pursuit. *Lopez v. Allen*, 96 Idaho 866, 538 P.2d 1170 (1975).

The applicability of this chapter to a specific cause of action arising from a personal injury must be determined by reference to the general character of the employer's business and the work which the employee was hired to perform, rather than by reference to the specific task being performed at the time of injury or the place of performance. *Lopez v. Allen*, 96 Idaho 866, 538 P.2d 1170 (1975).

### **Assumption of Risk.**

Question whether employee assumed risk or was negligent held for jury. *Tucker v. Palmberg*, 28 Idaho 693, 155 P. 981 (1916).

Employee, knowing that risk due to defective appliance exists, does not assume such risk unless he knows the danger arising therefrom. *Sumey v.*

Craig Mountain Lumber Co., 31 Idaho 234, 170 P. 112 (1918) (this case did not arise under employer's liability act).

### **Negligence of Employer.**

Where mine loader was accustomed to ride from place of dumping ore and waste back to mouth of tunnel on bumper of back car, which was an unsafe place to ride, but employer had not furnished safe place to ride and had permitted other loaders to ride at same place, and after working several days, loader fell from bumper and was crushed by car, employer was guilty of negligence and employee was not prevented from recovery by contributory negligence. *Chiara v. Stewart Mining Co.*, 24 Idaho 473, 135 P. 245 (1913).

Reasonably prudent master would ordinarily use a higher degree of care to keep place of work reasonably safe than would the servant occupying it. *Tucker v. Palmberg*, 28 Idaho 693, 155 P. 981 (1916).

## **RESEARCH REFERENCES**

**A.L.R.** — Technological feasibility as factor affecting validity of, or obligation of compliance with, standards established under Occupational Safety and Health Act (29 U.S.C. § 651 et seq.). 72 A.L.R. Fed. 2d 461.

**§ 44-1402. Employee's knowledge of defect or negligence — When employer excused thereby.** — The master or employer shall not be liable under any of the provisions of section 44-1401[, Idaho Code,] if the servant or employee knew of the defect or negligence causing the injury, or by the exercise of reasonable care could have known of the defect or negligence causing the injury and failed within a reasonable time to give notice thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer who had entrusted to him some general superintendence, unless the master or such superior already knew of such defect or negligence.

**History.**

1909, p. 34, 2d par. of § 1; I.C.A., § 43-2002.

**STATUTORY NOTES**

**Compiler's Notes.**

The words “provided that” were omitted from the beginning of this paragraph when this section was compiled separately from § 44-1401.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Instructions to Jury.**

Since an injured employee's mere knowledge of the physical characteristics of the instrumentality by which the injury was inflicted did not of itself constitute contributory negligence, the trial court's instruction on contributory negligence was defective, in an action to recover against employer for personal injuries sustained by the employee, where the jury was not instructed that the employer had to establish that the employee recognized, or in the exercise of due care should have recognized, the peril in the instrumentality. *Lopez v. Allen*, 96 Idaho 866, 538 P.2d 1170 (1975).



**§ 44-1403. Employee's knowledge of incompetency of coemployee — When employer excused thereby.** — The master or employer shall not be liable under any of the provisions of section 44-1401[, Idaho Code,] where the injury to the employee was caused by the incompetency of a coemployee, and such incompetency was known to the employee injured, and the employee injured failed within a reasonable time to give notice thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer who had entrusted to him some general superintendence, unless the master or employer or such superior already knew of such incompetency of such coemployee, and such master or employer failed or refused to discharge such incompetent employee or failed or refused to investigate the alleged incompetency of the coemployee and discharge him if found incompetent.

**History.**

1909, p. 34, 3d par. of § 1; I.C.A., § 43-2003.

**STATUTORY NOTES**

**Compiler's Notes.**

The words “provided also that” were omitted from beginning of this paragraph when this section was compiled separately from § 44-1401.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Control of Instrumentality.**

The defense of the fellow servant doctrine is not available to an employer if the employee whose negligence caused the injury had exclusive control of the instrumentality by which the injury was inflicted. *Lopez v. Allen*, 96 Idaho 866, 538 P.2d 1170 (1975).

**§ 44-1404. Injury or death of minor — Who may maintain action. —**

In the case of injury to an employee who is a minor, then the father, or in case of his death or the desertion of his family, the mother may maintain an action for injuries received for which the master is liable under the provisions of this chapter unless the said minor be married, in which case the said minor may maintain an action in his own name for the said injuries, and a guardian may under like circumstances maintain an action for the injury of his ward, and in the event the said minor be not married and have no father or mother dependent upon him, the said action may be maintained by a guardian to be appointed by the court for the benefit of the said minor. In case the said injuries result in the death of the said minor and the said minor be married, then the action may be maintained by the widow and guardian of the said minor's children, if any there be, and if the said minor be unmarried, then the father or in case of his death or desertion of his family, the mother may maintain an action for the death of said minor child resulting under such circumstances; and if neither father nor mother survive the said minor, the action may be brought by the next of kin who at the time of his death were dependent upon his wages for support, or by the personal representatives of the minor for the benefit of such next of kin who at the time of death of the said minor were dependent upon his wages for support.

**History.**

1909, p. 34, § 2; I.C.A., § 43-2004.

**STATUTORY NOTES**

**Cross References.**

Coverage of minor under workmen's compensation law, § 72-225.

**CASE NOTES**

**Other Laws Not Repealed.**

This law did not repeal former § 5-311 authorizing prosecution of action by heirs or personal representatives of one whose death is caused by the

wrongful act or negligence of another. *Chiara v. Stewart Min. Co.*, 24 Idaho 473, 135 P. 245 (1913).

**§ 44-1405. Death of adult employee — Who may maintain action. —**

In case the employee be not a minor and the injuries result in his death, then an action may be maintained by the widow of the deceased, or if he leaves no widow, his next of kin who at the time of his death were dependent upon his wages for support, or by his personal representatives for the benefit of his heirs or next of kin for damages against the employer under the circumstances mentioned in this chapter.

**History.**

1909, p. 34, § 3; I.C.A., § 43-2005.

**§ 44-1406. Damages in case of death — Maximum amount — Exemption from debts of deceased.** — The amount of damages to be recovered in case of death shall not exceed the sum of five thousand dollars (\$5000.00). The damages recovered on account of death shall not be subject to the debts of the deceased.

**History.**

1909, p. 34, § 4; I.C.A., § 43-2006.

**STATUTORY NOTES**

**Cross References.**

Income benefits for death under workmen's compensation law, § 72-413.

**§ 44-1407. Notice prerequisite to maintenance of action.** — No action for the recovery of compensation for injuries or death under this chapter shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and fifty (150) days, and the action is commenced within one (1) year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing, and shall be signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in this section, he may give the same within ten (10) days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator or widow or next of kin may give such notice within sixty (60) days after such death, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury, if it be shown that there was no intention to mislead and the party entitled to notice was not in fact misled thereby. The notice required by this section shall be served in the same manner as required of the service of summons in civil actions.

**History.**

1909, p. 34, § 5; I.C.A., § 43-2007.

**STATUTORY NOTES**

**Cross References.**

Service of summons, [Idaho R. Civ. P. 4](#).

**Effective Dates.**

Section 7 of C.L. 1909, p. 34 declared an emergency.



## Chapter 15

### MINIMUM WAGE LAW

Sec.

44-1501. Short title.

44-1502. Minimum wages.

44-1503. Definitions.

44-1504. Employees excepted from provisions of act.

44-1505. Employment of workers with disabilities for subminimum wages.

44-1506. Apprentice.

44-1507. Posting of summary of the act.

44-1508. Enforcement.

44-1509. Discharging or discriminating against employee's asserting rights under minimum wage law prohibited.

44-1510. Employees' remedies. [Repealed.]



**§ 44-1501. Short title.** — This act shall be known and may be cited as the “Minimum Wage Law.”

**History.**

1955, ch. 154, § 1, p. 301.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1955, Chapter 154, which is compiled as §§ 44-1501 to 44-1507.

**§ 44-1502. Minimum wages.** — (1) Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than seven dollars and twenty-five cents (\$7.25) per hour for employment. The amount of the minimum wage shall conform to, and track with, the federal minimum wage.

(2) In determining the wage of a tipped employee, the amount of direct wages paid by an employer to the employee shall be deemed to be increased on account of tips actually received by the employee; provided however, the direct wages paid to the employee by the employer shall not be in an amount less than three dollars and thirty-five cents (\$3.35) an hour. If the tips actually received by the employee combined with the direct wages paid by the employer do not at least equal the minimum wage, the employer must make up the difference. In the event a dispute arises between the employee and the employer with respect to the amount of tips actually received by the employee, it shall be the employer's burden to demonstrate the amount of tips actually received by the employee. Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) In lieu of the rate prescribed by subsection (1) of this section, an employer may pay an employee who has not attained twenty (20) years of age a wage which is not less than four dollars and twenty-five cents (\$4.25) an hour during the first ninety (90) consecutive calendar days after such employee is initially employed. No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

(4) No political subdivision of this state, as defined by [section 6-902, Idaho Code](#), shall establish by ordinance or other action minimum wages higher than the minimum wages provided in this section.

**History.**

1955, ch. 154, § 2, p. 301; am. 1963, ch. 9, § 1, p. 20; am. 1967, ch. 411, § 1, p. 1222; am. 1971, ch. 123, § 1, p. 422; am. 1976, ch. 38, § 1, p. 80; am. 1990, ch. 132, § 1, p. 305; am. 1990, ch. 212, § 1, p. 479; am. 1997, ch. 309, § 1, p. 916; am. 1998, ch. 107, § 1, p. 366; am. 2007, ch. 357, § 1, p. 1056; am. 2016, ch. 145, § 1, p. 412.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 357, added the last sentence in subsection (1); and in subsection (2), in the first sentence, substituted “the amount of direct wages paid by an employer to the employee” for “the amount paid such employee by an employer” and the language beginning “provided however” for “but not by an amount in excess of thirty-three percent (33%) of the applicable minimum wage, beginning April 1, 1997, and until August 31, 1997, and thirty-five percent (35%) on and after September 1, 1997, as set forth in subsection (1) of this section,” and added the second sentence.

The 2016 amendment, by ch. 145, rewrote the first sentence in subsection (1), which formerly read: “Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than four dollars and seventy-five cents (\$ 4.75) commencing April 1, 1997, and five dollars and fifteen cents (\$ 5.15) commencing September 1, 1997, per hour for employment” and added subsection (4).

### **Compiler’s Notes.**

For current federal minimum wage, referred to in subsection (1), see <http://www.dol.gov/elaws/faq/esa/flsa/001.htm>.

S.L. 2007, Chapter 357 became law without the signature of the governor, effective April 11, 2007.

S.L. 2016, Chapter 145 became law without the signature of the governor, effective July 1, 2016.

### **Effective Dates.**

Section 2 of S.L. 1990, ch. 212 declared an emergency and provided that the act should take effect April 1, 1990.

Section 2 of S.L. 1997, ch. 309 declared an emergency and provided that the act should be in effect on and after April 1, 1997.

### **RESEARCH REFERENCES**

**ALR.** — Tips as wages for purposes of state wage laws. 61 A.L.R.6th 61.

**§ 44-1503. Definitions.** — “Agriculture” includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

“Wages” paid to any employee includes compensation paid to such employee in the form of legal tender of the United States, checks on banks convertible into cash on demand, and also includes the reasonable cost as determined by the employment security agency [department of labor] to the employer of furnishing such employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employee and used by employees, and commissions of every kind, and tips or gratuities as provided by [section 44-1502, Idaho Code](#).

“Employ” includes to suffer or permit to work. “Employee” includes any individual employed by an employer. “Employer” includes any person employing an employee or acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any state or political subdivision of a state, or any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

“Person” means any individual, partnership, association, corporation, business, trust, legal representative, or any organized group of persons.

“Tipped employee” means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

**History.**

1955, ch. 154, § 3, p. 301; am. 1957, ch. 184, § 1, p. 362; am. 1990, ch. 132, § 2, p. 305; am. 2001, ch. 70, § 1, p. 140.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The bracketed insertion in the second paragraph was added by the compiler, as the duties of the former employment security agency are now performed by the department of labor. See § 72-301 et seq.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 1990, ch. 132 declared an emergency. Approved April 1, 1990.

## **RESEARCH REFERENCES**

**ALR.** — Tips as wages for purposes of state wage laws. [61 A.L.R.6th 61](#).

**§ 44-1504. Employees excepted from provisions of act.** — The provisions of this act shall not apply to:

(1) Any employee employed in a bona fide executive, administrative or professional capacity; or

(2) Anyone engaged in domestic service; or

(3) Any individual employed as an outside salesman; or

(4) Seasonal employees of a nonprofit camping program; or

(5) Any child under the age of sixteen (16) years working part time or at odd jobs not exceeding a total of four (4) hours per day with any one (1) employer; or

(6) Any employee under the age of eighteen (18) years who is employed by an immediate family member or such family member's business; or

(7) Any individual employed in agriculture if:

(a) Such employee is the parent, spouse, child or other member of his employer's immediate family; or

(b) Such employee is older than sixteen (16) years of age and:

(i) Is employed as a harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and

(ii) Commutes daily from his permanent residence to the farm on which he is so employed, and

(iii) Has been employed in agriculture less than thirteen (13) weeks during the preceding calendar year; or

(c) Such employee is sixteen (16) years of age or under and:

(i) Is employed as a harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and

- (ii) Is employed on the same farm as his parent or person standing in the place of his parent, and
- (iii) Is paid at the same piece-rate basis as employees over the age of sixteen (16) years are paid on the same farm; or
- (d) Such employee is principally engaged in the range production of livestock.

### **History.**

1955, ch. 154, § 4, p. 301; am. 1959, ch. 59, § 1, p. 128; 1967, ch. 411, § 2, p. 1222; am. 1978, ch. 307, § 1, p. 770; am. 2001, ch. 70, § 2, p. 140; am. 2018, ch. 251, § 1, p. 581.

## **STATUTORY NOTES**

### **Amendments.**

The 2018 amendment, by ch. 251, inserted subsection (6) and redesignated former subsection (6) as subsection (7).

### **Compiler's Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1955, Chapter 154, which is compiled as §§ 44-1501 to 44-1507.

## **RESEARCH REFERENCES**

**ALR.** — Who is employed in “executive or administrative capacity” within exemptions from minimum and maximum hours provisions of [Fair Labor Standards Act](#). [131 A.L.R. Fed. 1](#); [124 A.L.R. Fed. 1](#).

Validity and construction of domestic service provisions of Fair Labor Standards Act ([29 U.S.C. §§ 201 et seq.](#)). [165 A.L.R. Fed. 163](#).



**§ 44-1505. Employment of workers with disabilities for subminimum wages.** — The payment of the minimum wage under this act shall not apply to a worker with disabilities, if the employer is issued a special certificate, as provided now or hereafter under the federal fair labor standards act.

**History.**

1955, ch. 154, § 5, p. 301; am. 1974, ch. 39, § 61, p. 1023; am. 1996, ch. 421, § 17, p. 1406.

**STATUTORY NOTES**

**Federal References.**

The fair labor standards act of 1938 is codified as [29 U.S.C.S. § 201 et seq.](#)

**Compiler's Notes.**

The term “this act” refers to S.L. 1955, Chapter 154, which is compiled as §§ 44-1501 to 44-1507.

**§ 44-1506. Apprentice.** — For any employment in which the minimum wage is applicable, the director of the department of labor may issue to an apprentice or learner a special license authorizing the employment of such apprentice or learner for the time and under the conditions which he determines and at a wage less than the minimum wage established by this act. Apprentice or learner shall include a student or students enrolled in a bona fide secondary school program administered by an accredited school district which includes work training experience. The director may hold such hearings and conduct such investigations as he shall deem necessary before fixing a special wage for such apprentice or learner.

**History.**

1955, ch. 154, § 6, p. 301; am. 1974, ch. 39, § 62, p. 1023; am. 1976, ch. 223, § 1, p. 796; am. 1996, ch. 421, § 18, p. 1406.

**STATUTORY NOTES**

**Cross References.**

Director of department of labor, § 72-1333.

**Compiler's Notes.**

The term “this act” at the end of the first sentence refers to S.L. 1955, Chapter 154, which is compiled as §§ 44-1501 to 44-1507.

**§ 44-1507. Posting of summary of the act.** — Every employer subject to this act shall keep a summary of this act, furnished by the director of the department of labor, without charge, posted in a conspicuous place, in or about the premises wherein any person subject to the act is employed, or in a place accessible to his employees.

**History.**

1955, ch. 154, § 7, p. 301; am. 1974, ch. 39, § 63, p. 1023; am. 1996, ch. 421, § 19, p. 1406.

**STATUTORY NOTES**

**Cross References.**

Director of department of labor, § 72-1333.

**Compiler's Notes.**

The terms “this act” and “the act” in the section heading and text refer to S.L. 1955, Chapter 154, which is compiled as §§ 44-1501 to 44-1507.

**Effective Dates.**

Section 97 of S.L. 1974, ch. 39 provided that this act take effect on and after July 1, 1974.

**§ 44-1508. Enforcement.** — (1) When the director of the department of labor has reason to believe that an employer is engaged in an act or practice which violates or will violate a provision of chapter 15, title 44, Idaho Code, he may bring an action in a court of competent jurisdiction to enjoin the act or practice, and to enforce compliance with the provisions of chapter 15, title 44, Idaho Code. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(2) A claim for unpaid minimum wages as set forth in [section 44-1502, Idaho Code](#), may be treated as a claim for wages due and owing under chapter 6, title 45, Idaho Code. Such claim shall not be subject to the limitation contained in [section 45-617\(1\), Idaho Code](#). Any action for such wages must be commenced in a court of competent jurisdiction within two (2) years after the cause of action shall have accrued.

**History.**

[I.C., § 44-1508](#), as added by 1976, ch. 38, § 3, p. 80; am. 1996, ch. 421, § 20, p. 1406; am. 1999, ch. 51, § 1, p. 115.

**STATUTORY NOTES**

**Cross References.**

Director of department of labor, § 72-1333.

**Prior Laws.**

Former § 44-1508, which comprised 1955, ch. 154, § 8, p. 301; 1974, ch. 39, § 64, p. 1023, was repealed by S.L. 1976, ch. 38, § 2.

**§ 44-1509. Discharging or discriminating against employee's asserting rights under minimum wage law prohibited.** — No employer shall discharge or in any other manner discriminate against any employee:

(1) Because the employee has made complaint that he has not been paid wages in accordance with chapter 15, title 44, Idaho Code.

(2) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or related to chapter 15, title 44, Idaho Code.

(3) Because the employee has testified or is about to testify in any proceedings under or related to chapter 15, title 44, Idaho Code. [I. C., § 44-1509, as added by 1976, ch. 38, § 5, p. 80.]

## STATUTORY NOTES

### Prior Laws.

Former § 44-1509, which comprised 1955, ch. 154, § 9, p. 301, was repealed by S.L. 1976, ch. 38, § 4.

**§ 44-1510. Employees' remedies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1955, ch. 154, § 10, p. 301; 1957, ch. 184, § 2, p. 362, was repealed by S.L. 1976, ch. 38, § 6.



## Chapter 16

### FARM LABOR CONTRACTOR LICENSING

Sec.

44-1601. Definitions.

44-1602. Exemptions.

44-1603. License — Application — Contents.

44-1604. Applicant — Proof of financial responsibility — Payment of claims.

44-1605. Application fee — Appropriation.

44-1606. Department — Licensing duties — License — Term — Renewal fee.

44-1607. Farm labor contractor — Duties.

44-1608. Farm labor contractor — Applicant for license — Prohibited acts.

44-1609. License — Denial, revocation, suspension, refusal to renew.

44-1610. Action against license — Hearing.

44-1611. Joint liability.

44-1612. Claim for wages — Exclusive remedy.

44-1613. Private right of action.

44-1614. Service of process when unlicensed contractor is unavailable.

44-1615. Retaliation prohibited.

44-1616. Violations — Penalty.

44-1617. Department — Administrative rules.

44-1618. Severability.



**§ 44-1601. Definitions.** — As used in this chapter:

(1) “Agricultural association” means any nonprofit or cooperative association of farmers, growers or ranchers, incorporated or qualified under applicable state law.

(2) “Agricultural employer” means any person engaged in any activity included within the definition of “agriculture” in subsection (3) of this section.

(3) “Agriculture” includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market or to carriers for transportation to market. This definition shall not include forestry, lumbering operations or logging contractors.

(4) “Department” means the department of labor of the state of Idaho.

(5) “Director” means the director of the department of labor.

(6) “Farm labor contracting activity” means recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker.

(7) “Farm labor contractor” means any person who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(8) “Immediate family member” means the spouse, children, brother, sister, mother or father.

(9) “Migrant agricultural worker” means an individual who is employed in agricultural employment of a seasonal or temporary nature, and who is required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

(10) “Person” means an individual, association, partnership, limited liability company, corporation or other business entity.

(11) “Seasonal agricultural worker” means an individual who is employed in agricultural employment of a seasonal or temporary nature and is not required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

**History.**

I.C., § 44-1601, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Cross References.**

Department of labor, § 72-1333 et seq.

**Prior Laws.**

Former §§ 44-1601 to 44-1606, which comprised 1965, ch. 154, §§ 1 to 6, p. 299; 1974, ch. 39, §§ 65 to 68, p. 1023, relating to employment discrimination because of age, were repealed by S.L. 1982, ch. 83, § 7. For present law, see § 67-5901 et seq.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1602. Exemptions.** — The provisions of this chapter shall not apply to the following:

(1) An agricultural association engaged in farm labor contracting activities exclusively for members of that association.

(2) Any individual engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(3) Agricultural employers exchanging agricultural labor or services with each other, provided the work is performed on land owned or leased by the agricultural employers.

(4) Any common carrier that would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one that holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and holds a valid certificate or authorization for such purpose from an appropriate local, state or federal agency.

(5) Any nonprofit charitable organization, public entity or private nonprofit educational institution.

(6) Any employee of a person described in subsections (1) through (5) of this section when performing farm labor contracting activities exclusively for such person, unless the employee receives a commission or fee based upon the number of workers recruited.

**History.**

I.C., § 44-1602, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Prior Laws.**

Former § 44-1602 was repealed. See Prior Laws, § 44-1601.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1603. License — Application — Contents.** — (1) Except as otherwise provided, no person shall act as a farm labor contractor unless such person holds a valid license issued by the department.

(2) An application for a farm labor contractor's license shall be sworn to by the applicant and shall be submitted on a form prescribed by the department that shall require, but not be limited to, the following information and documentation:

- (a) The applicant's name, Idaho address and all other temporary and permanent addresses the applicant uses or knows will be used in the future;
- (b) Two (2) recent, passport sized, color photographs of the applicant, or the applicant's authorized agent when the applicant is not a natural person;
- (c) A statement by the applicant of all facts required by the department concerning the applicant's fitness, competency, and qualifications to engage in the business of farm labor contracting;
- (d) A statement by the applicant of all facts required by the department concerning the manner and method by which the applicant proposes to conduct operations as a farm labor contractor;
- (e) A certificate of insurance issued by the applicant's auto insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice for all vehicles used in the operation of the farm labor contracting business;
- (f) A certificate of workers' compensation insurance issued by the applicant's workers' compensation insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice;
- (g) Whether the applicant has or was ever granted a farm labor contractor's license in any other jurisdiction;
- (h) Whether the applicant was ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any other

jurisdiction;

(i) The names and addresses of all persons financially interested, whether as partners, limited liability company members, shareholders, associates, or profit sharers in the applicant's proposed operation as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any such persons were ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any jurisdiction; and

(j) The following declaration by the applicant, or the applicant's authorized agent when the applicant is not a natural person: "With regards to any action filed against the applicant concerning the applicant's activities as a farm labor contractor, the applicant appoints the director of the Idaho Department of Labor as the applicant's lawful agent to accept service of summons when the applicant is not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.".

### **History.**

I.C., § 44-1603, as added by 2002, ch. 328, § 1, p. 919.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 44-1603 was repealed. See Prior Laws, § 44-1601.

### **Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1604. Applicant — Proof of financial responsibility — Payment of claims.** — (1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of employees' wages pursuant to chapter 6, title 45, Idaho Code, and the payment of any claims awarded pursuant to [section 44-1613, Idaho Code](#).

(2) Proof of financial responsibility shall be in the form of a surety bond from a company licensed to do business in the state of Idaho. The surety bond shall be in the amount of ten thousand dollars (\$10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars (\$30,000) if the contractor employs more than twenty (20) employees.

(3) The surety bond shall be for the benefit of the farm labor contractor's employees and shall be conditioned upon the payment of all sums legally owing to them.

(4) The surety bond shall be executed to cover the farm labor contractor's liability for the period for which the license is issued, during which time the bond cannot be canceled or otherwise terminated.

(5) All claims against the bond shall be unenforceable unless request for payment of a court judgment, or lien pursuant to [section 45-620, Idaho Code](#), has been sent by certified mail to the surety. The surety company shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total amount of the bond.

(6) In lieu of the surety bond required by this section, an applicant or farm labor contractor may deposit with the department cash or other security acceptable to the director. The deposit shall not be less than ten thousand dollars (\$10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars (\$30,000) if the farm labor contractor employs more than twenty (20) employees. The security deposited with the director in lieu of the surety bond shall be returned to the farm labor contractor at the expiration of two (2) years after the farm labor contractor's license has expired or been otherwise

terminated, unless the director has received written notice that a legal or administrative action has been instituted against the farm labor contractor for failing to comply with the requirements of this chapter.

**History.**

I.C., § 44-1604, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Prior Laws.**

Former § 44-1604 was repealed. See Prior Laws, § 44-1601.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.



**§ 44-1605. Application fee — Appropriation.** — Each application shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250). All fees collected shall be continuously appropriated to the department and used for the administration of this chapter.

**History.**

I.C., § 44-1605, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Prior Laws.**

Former § 44-1605 was repealed. See Prior Laws, § 44-1601.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1606. Department — Licensing duties — License — Term — Renewal fee.** — (1) The department shall issue licenses to persons who are at least eighteen (18) years of age and who have shown themselves to be fit, competent and qualified to engage in the business of farm labor contracting. Factors to be considered by the department in making this determination shall include, but not be limited to, the following:

- (a) Whether an applicant has unsatisfied judgments or administrative decisions requiring the payment of unpaid wages;
- (b) Whether an applicant has worker's compensation coverage for each employee;
- (c) Whether an applicant has paid unemployment insurance contributions when due;
- (d) Whether an applicant has violated any provision of this chapter or the rules adopted hereunder;
- (e) Whether an applicant was ever denied a license or had a license revoked, suspended or not renewed under the farm labor contractor laws of any jurisdiction;
- (f) Whether an applicant has employed an agent who has had a farm labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of this chapter or the rules adopted hereunder; and
- (g) Whether an applicant, when required by law, has failed or refused to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of the applicant's employees.

(2) The industrial commission shall make records available to the department, including records that are otherwise exempt from disclosure under [section 74-105, Idaho Code](#), for the purpose of determining an applicant's qualifications under subsection (1)(b) of this section. Records disclosed under this subsection shall not be further disclosed by the department.

(3) The department shall issue a license within fifteen (15) business days of receipt of a completed application if the department determines the applicant to be fit, competent and qualified to engage in the business of farm labor contracting. An application shall be deemed completed when all required information and documentation has been submitted to the department.

(4) The license shall not be transferable or assignable.

(5) The first year of licensing shall run from April 1st to the following March 31st and each license shall expire on March 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department. Beginning January 1, 2004, the licensing year shall run from January 1st to the following December 31st and each license shall expire on December 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department.

(6) A license may be renewed annually upon payment of a nonrefundable fee of two hundred fifty dollars (\$250) and by providing the following:

(a) Proof of financial responsibility as required by [section 44-1604, Idaho Code](#);

(b) A certificate of insurance as required by [section 44-1603\(2\)\(e\), Idaho Code](#); and

(c) A certificate of insurance as required by [section 44-1603\(2\)\(f\), Idaho Code](#).

The department may require any person seeking renewal to file a new application showing the person to be fit, competent and qualified to continue to engage in the business of farm labor contracting.

(7) The department shall maintain a central public registry of all persons issued a farm labor contractor's license.

### **History.**

[I.C., § 44-1606](#), as added by 2002, ch. 328, § 1, p. 919; am. 2015, ch. 141, § 119, p. 379.

## **STATUTORY NOTES**

**Cross References.**

Industrial commission, § 72-501 et seq.

**Prior Laws.**

Former § 44-1606 was repealed. See Prior Laws, § 44-1601.

**Amendments.**

The 2015 amendment, by ch. 141, substituted “74-105” for “9-340B” in the first sentence of subsection (2).

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1607. Farm labor contractor — Duties.** — A farm labor contractor shall:

(1) Carry his farm labor contractor license at all times and exhibit such license upon request to anyone with whom the farm labor contractor intends to deal in his capacity as a farm labor contractor.

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made.

(3) Pay or distribute promptly when due to the persons entitled all money or other things of value entrusted to the farm labor contractor for that purpose.

(4) Comply with the terms and provisions of all agreements or contracts entered into by the farm labor contractor.

(5) Comply with all applicable state laws and rules.

(6) Provide to the department certified copies of payroll records for any payment period requested by the department.

(7) Provide to each employee at the time of hiring, recruiting, soliciting or supplying such employee, whichever occurs first, a written statement in English or, as necessary and reasonable, in Spanish or other language common to agricultural workers who are not fluent or literate in English, that contains a description of:

(a) The rate of compensation and the method of computing the rate of compensation;

(b) The terms and conditions of employment, including the name and address of the farm labor contractor, the place of employment, the approximate length of the period of employment and the approximate starting and ending dates;

(c) The terms and conditions of any bonus offered and the manner of determining when the bonus is earned;

(d) The terms and conditions of any loan made to the employee;

(e) The terms and conditions of any housing, transportation, equipment, health care, day care or any other employee benefit to be provided by the farm labor contractor or the farm labor contractor's agent, and the costs to be charged for each item;

(f) The name and address of the surety on the farm labor contractor's bond;

(g) The employee's rights and remedies, including an employee's right to make a claim against the farm labor contractor's surety bond.

(8) Provide to the employee each time the employee receives a compensation payment from the farm labor contractor a written statement itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked and, if the work was done on a piece basis, the number of pieces completed.

(9) For each employee make, keep and preserve for three (3) years the following information:

(a) The basis on which wages were paid;

(b) The number of piecework units earned, if paid on a piecework basis;

(c) The number of hours worked;

(d) The total pay period earnings;

(e) The specific sums withheld and the reason for withholding each sum;

(f) The net pay; and

(g) The name and address of the owner of all operations, or the owner's agent, where the employee worked.

### **History.**

I.C., § 44-1607, as added by 2002, ch. 328, § 1, p. 919.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1608. Farm labor contractor — Applicant for license — Prohibited acts.** — A farm labor contractor or an applicant for a farm labor contractor's license shall not:

(1) Make misrepresentations or false statements on the application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent or misleading information concerning the terms, conditions or existence of any employment.

(3) Solicit, induce or cause to be solicited or induced the violation of an existing contract of employment.

(4) Violate, or assist another person to violate the requirements of this chapter.

(5) By any force, intimidation, or threat, including threat of deportation, induce any employee of the farm labor contractor to give up any part of the compensation to which the employee is entitled under federal or state wage payment laws.

**History.**

I.C., § 44-1608, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1609. License — Denial, revocation, suspension, refusal to renew.** — (1) The department may deny, revoke, suspend or refuse to renew a farm labor contractor license when:

- (a) The applicant or licensee, or the agent of the applicant or licensee, has had his farm labor contractor's license denied or revoked in any jurisdiction within three (3) years of the date of application;
- (b) The licensee or his agent has violated or failed to comply with any provision of this chapter or the rules promulgated hereunder;
- (c) The applicant or licensee has an unsatisfied court judgment or final administrative decision against him for unpaid wages;
- (d) The applicant or licensee made false or misleading statements on, or provided false or misleading information with, his application for a license;
- (e) The applicant or licensee fails to maintain proof of financial responsibility as required by [section 44-1604, Idaho Code](#);
- (f) The applicant or licensee fails to provide, or the department receives notice of cancellation of any certificates of insurance required by [section 44-1603, Idaho Code](#);
- (g) The applicant or licensee fails to pay unemployment insurance contributions when due; or
- (h) The applicant or licensee, when required by law, fails or refuses to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of his employees.

(2) Before the department denies, revokes, suspends or refuses to renew a license, the applicant or licensee shall be given written notice of the reasons for the licensing action and an opportunity for a hearing.

#### **History.**

[I.C., § 44-1609](#), as added by 2002, ch. 328, § 1, p. 919.

#### **STATUTORY NOTES**



**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1610. Action against license — Hearing.** — (1) The contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall not apply to licensing actions under this chapter.

(2) When it appears, pursuant to [section 44-1609, Idaho Code](#), that sufficient cause exists for the denial of any application for, the revocation or suspension of, or refusal to renew any license required by this chapter, the department shall serve notice, in the manner provided for in subsection (7) of this section, to the applicant or license holder stating the proposed adverse action to be taken, the grounds on which such action is based, and that the department's proposed action shall become final unless, within ten (10) calendar days of the date of mailing of the notice, the aggrieved party files with the department a written request for a hearing.

(3) A written request for a hearing may be filed by personal delivery, by mail, or by fax to the wage and hour section of the department at the address indicated on the notice. The date of personal delivery shall be noted on the request and shall be deemed the date of filing. If mailed, the hearing request shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed request that is received by the wage and hour section by 5:00 p.m. on a business day shall be deemed filed on that date. A faxed request that is received by the wage and hour section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

(4) Reasonable notice of the hearing, containing the date, time, place and purpose of the hearing, shall be served on all parties to the hearing in the manner provided for in subsection (7) of this section.

(5) The hearing shall be conducted by an employee of the department designated by the director to be the hearing officer, who shall not be bound by statutory rules of evidence or by technical or formal rules of procedure. A record shall be made of the sworn testimony. Every party to the proceeding shall have the right to counsel at their own expense and a full opportunity to be heard, including such cross-examination as may be appropriate. The hearing officer, as soon after the conclusion of the hearing as possible, on the basis of the record made at the hearing, shall issue a

decision and serve it on all parties to the hearing in the manner provided for in subsection (7) of this section.

(6) The decision of the hearing officer shall be a final agency order and shall be effective on the date it is issued, subject only to the judicial review provisions of chapter 52, title 67, Idaho Code.

(7) Any notice or decision required by this section shall be deemed served if delivered to the person being served or if mailed to his last known address. Service by mail shall be deemed completed on the date of mailing. The date indicated on the notice or decision as the “date of mailing” shall be presumed to be the date the document was deposited in the United States mail, unless otherwise shown by a preponderance of competent evidence.

**History.**

I.C., § 44-1610, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Compiler’s Notes.**

For further information on Idaho department of labor farm worker services, see <https://www.labor.idaho.gov/dnn/Job-Seek-ers/Farmworker-Services>.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1611. Joint liability.** — (1) If an agricultural employer uses a farm labor contractor who is properly licensed and bonded under the provisions of this chapter, that agricultural employer shall not be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the farm labor contractor who performed work for that agricultural employer.

(2) An agricultural employer who knowingly uses the services of an unlicensed farm labor contractor shall be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the unlicensed farm labor contractor who performed work for that agricultural employer. In making determinations under this section, any user of a farm labor contractor may rely upon either the license issued by the department to the farm labor contractor under [section 44-1603, Idaho Code](#), or the department's representation that such contractor is licensed as required by this chapter.

**History.**

[I.C., § 44-1611](#), as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1612. Claim for wages — Exclusive remedy.** — A claim for unpaid wages by an employee of a farm labor contractor shall be treated as a claim for wages under chapter 6, title 45, Idaho Code.

**History.**

I.C., § 44-1612, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1613. Private right of action.** — Except as provided for in [section 44-1612, Idaho Code](#), any person aggrieved by a violation of this chapter may bring a civil action in a court of competent jurisdiction for injunctive relief, damages or both. If the court finds that any person violated any of the provisions of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages, or one thousand dollars (\$1,000) per violation, whichever is greater. The court shall also award a prevailing plaintiff reasonable attorney's fees and costs. No action under this section may be commenced later than two (2) years after the date of the violation giving rise to the right of action.

**History.**

[I.C., § 44-1613](#), as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1614. Service of process when unlicensed contractor is unavailable.** — In any action arising out of the activities of an unlicensed farm labor contractor within this state who is not in the state or is otherwise unavailable for service of process in this state, the unlicensed farm labor contractor may be served by mailing a certified true copy of the summons and complaint to the director; the last-known address, if any, of the unlicensed farm labor contractor; and any other address the use of which the plaintiff knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

**History.**

I.C., § 44-1614, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1615. Retaliation prohibited.** — No farm labor contractor may discharge or in any other manner discriminate against an employee because that employee made a claim against the farm labor contractor pursuant to this chapter, testified or is about to testify in any proceedings brought pursuant to this chapter, or discussed or consulted with anyone concerning the employee's rights under this chapter.

**History.**

I.C., § 44-1615, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.



**§ 44-1616. Violations — Penalty.** — (1) Any person who intentionally defaces, alters or changes a farm labor contractor license, or who uses the license of another, or who knowingly permits another person to use his license or acts as a farm labor contractor without a license shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000), or up to sixty (60) days in jail or both. Each violation shall constitute a separate offense.

(2) Any person who violates any other provision of this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed three hundred dollars (\$300), or up to thirty (30) days in jail or both. Each violation shall constitute a separate offense.

**History.**

I.C., § 44-1616, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1617. Department — Administrative rules.** — The department may adopt rules reasonably necessary for the administration of this chapter.

**History.**

I.C., § 44-1617, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.

**§ 44-1618. Severability.** — The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

**History.**

I.C., § 44-1618, as added by 2002, ch. 328, § 1, p. 919.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 328 provided that the act should take effect on and after January 1, 2003.



## Chapter 17

### DISCRIMINATORY WAGE RATES BASED UPON SEX

Sec.

44-1701. Definitions.

44-1702. Discriminatory payment of wages based upon sex prohibited.

44-1703. Powers and duties of director with respect to unlawful pay practices.

44-1704. Procedures for collection of unpaid wages.

**§ 44-1701. Definitions.** — As used in this act:

(1) “Employee” means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions.

(2) “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(3) “Wage rate” means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the director in regulations issued under this act.

(4) “Employ” includes to suffer or permit to work.

(5) “Occupation” includes any industry, trade, business or branch thereof, or any employment or class of employment.

(6) “Director” means the director of the human rights commission.

**History.**

1969, ch. 252, § 1, p. 783; am. 1974, ch. 39, § 69, p. 1023; am. 1982, ch. 83, § 6, p. 151.

**STATUTORY NOTES**

**Cross References.**

Commission on human rights, § 67-5901 et seq.

**Compiler’s Notes.**

The term “this act” in the introductory paragraph and in subsection (3) refers to S.L. 1969, Chapter 252, which is compiled as §§ 44-1701 to 44-1704.

**RESEARCH REFERENCES**

**ALR.** — Application of state law to sex discrimination in employment advertising. [66 A.L.R.3d 1237](#).

Construction and application of provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.) making sex discrimination in employment unlawful. 12 A.L.R. Fed. 15; 115 A.L.R. Fed. 1; 116 A.L.R. Fed. 1; 123 A.L.R. Fed. 1.

Propriety of treating separate entities as one for determining number of employees required by Title VII of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e(b)) for action against “employer”. 160 A.L.R. Fed. 441.

**§ 44-1702. Discriminatory payment of wages based upon sex prohibited.** — (1) No employer shall discriminate between or among employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Differentials which are paid pursuant to established seniority systems or merit increase systems, which do not discriminate on the basis of sex, are not within this prohibition.

(2) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of this act.

(3) No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this act.

### **History.**

1969, ch. 252, § 2, p. 783.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” in subsections (2) and (3) refers to S.L. 1969, Chapter 252, which is compiled as §§ 44-1701 to 44-1704.

## **RESEARCH REFERENCES**

**ALR.** — Discrimination against pregnant employee as violation of state fair employment laws. [99 A.L.R.5th 1](#).

Liability of employer, supervisor, or manager for intentionally or recklessly causing employee emotional distress — Ethnic, racial, or religious harassment or discrimination. [19 A.L.R.6th 1](#).

Construction and application of provisions of Equal Pay Act of 1963 ([29 U.S.C. § 206\(d\)](#)) prohibiting wage discrimination on basis of sex. [7 A.L.R.](#)



Fed. 707.

Propriety of treating separate entities as one for determining number of employees required by Title VII of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e(b)) for action against “employer”. 160 A.L.R. Fed. 441.

What constitutes reverse or majority gender discrimination against males violative of federal constitution or statutes — private employment cases. 162 A.L.R. Fed. 273.

**§ 44-1703. Powers and duties of director with respect to unlawful pay practices.** — (1) The director is authorized to endeavor to eliminate pay practices unlawful under this act, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under this act.

(2) The director shall have power to issue such regulations, not inconsistent with the purpose of this act, as he deems necessary or appropriate to carry out its provisions.

(3) Employers shall be furnished copies or abstracts of this act and such regulations by the director on request without charge.

**History.**

1969, ch. 252, § 3, p. 783; am. 1974, ch. 39, § 70, p. 1023.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” throughout the section refers to S.L. 1969, Chapter 252, which is compiled as §§ 44-1701 to 44-1704.

**CASE NOTES**

**Construction.**

The enactment of §§ 18-7303, 67-5909, and this section expressed a clear, unambiguous intent to prohibit discrimination in employment practices on the basis of sex. *Idaho Trailer Coach Ass'n v. Brown*, 95 Idaho 910, 523 P.2d 42 (1974).

**§ 44-1704. Procedures for collection of unpaid wages.** — (1) Any employer who violates the provisions of [section 44-1702, Idaho Code](#), shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of wilful violation in employee suits under subsection (2) of this section, up to an additional equal amount as liquidated damages.

(2) Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(3) No agreement by any such employee to work for less than the wage to which such employee is entitled under this act shall be a bar to any such action, or to a voluntary wage restitution of the full amount due under this act.

(4) At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under this act, the director may bring any legal action necessary in behalf of the employee to collect such claim for unpaid wages. The director shall not be required to pay the filing fee, or other costs, in connection with such action. The director shall have power to join various claims against the employer in one (1) cause of action.

(5) In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this act.

(6) The director shall have power to petition any court of competent jurisdiction to restrain violations of [section 44-1702, Idaho Code](#), and for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this act.

### **History.**

1969, ch. 252, § 4, p. 783; am. 1974, ch. 39, § 71, p. 1023.

## STATUTORY NOTES

### Compiler's Notes.

The term “this act” throughout the section refers to S.L. 1969, Chapter 252, which is compiled as §§ 44-1701 to 44-1704.

Section 5 of S.L. 1969, ch. 252 read: “The provisions of this act are hereby declared to be severable and if any provisions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

### Effective Dates.

Section 97 of S.L. 1974, ch. 39 provided that this act take effect on and after July 1, 1974.

## CASE NOTES

### Measure of Costs.

The proper measure of attorney fees under subsection (2) of this section, a state law cause of action, is governed by the [Idaho R. Civ. P. 54](#). [Perkins v. U.S. Transformer W.](#), 132 Idaho 427, 974 P.2d 73 (1999), overruled on other grounds, [Poole v. Davis](#), 153 Idaho 604, 288 P.3d 821 (2012).

Although the language of subsection (2) of this section is broader than the language of [Idaho R. Civ. P. 54](#), the rule is the proper measure for costs under this statutory section, since, without specific language to the contrary in the statute, the rules of civil procedure provide the correct basis by which to measure an award of costs in an action to collect unpaid wages. [Perkins v. U.S. Transformer W.](#), 132 Idaho 427, 974 P.2d 73 (1999), overruled on other grounds, [Poole v. Davis](#), 153 Idaho 604, 288 P.3d 821 (2012).



## Chapter 18

### EMPLOYMENT OF FIREFIGHTERS

Sec.

44-1801. Definitions.

44-1802. Collective bargaining rights of firefighters — Representation by bargaining agent.

44-1803. Recognition of exclusive bargaining agent.

44-1804. Obligation of corporate authorities to bargain in good faith — Entering into written contract.

44-1805. Submission of issues to fact finding commission.

44-1806. Appointment of fact-finding commission — Public officials and employees ineligible — Payment of expenses.

44-1807. Negotiated agreements constitute contract.

44-1808. Notice of request for bargaining on matters requiring appropriation.

44-1809. Notice of hearing before fact finding commission — Presentation of evidence — Determination by majority.

44-1810. Written recommendation of commission — Copies to parties.

44-1811. Strikes prohibited during contract.

44-1812. Minimum standards for employing paid firefighters.

**§ 44-1801. Definitions.** — As used in this act the following terms shall have the following meanings:

(1) “Firefighter” shall mean the paid members, except supervisors, of any regularly constituted fire department in any city, county, fire district or political subdivision within the state. The term “supervisor” means any individual having authority in the interest of an employer to hire, direct, assign, promote, reward, transfer, lay off, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to effectively recommend such action if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; provided, the term “supervisor” shall include only those individuals who perform a preponderance of the above specified acts of authority on a day-to-day basis; and provided further, a supervisor’s administrative responsibilities must include demonstrated involvement in policy and budget formulation for the department. Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either state or local, related to collective bargaining.

(2) “Corporate authority” shall mean the council, commission, trustees, or any other governing body of any city, county, fire district or political subdivision whose duty it is to establish wages, working conditions, and other conditions of employment of firefighters.

**History.**

1970, ch. 138, § 1, p. 333; am. 1977, ch. 98, § 1, p. 205; am. 1999, ch. 50, § 1, p. 112.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1970, Chapter 138, which is compiled as §§ 44-1801 to 44-1811.

The term “this act” near the end of subsection (1) refers to S.L. 1977, Chapter 98, which is codified as § 44-1803 and this section.

Probably both references to “this act” should read “this chapter,” being chapter 18, title 44, Idaho Code.

**Effective Dates.**

Section 4 of S.L. 1999, ch. 50 declared an emergency. Approved March 11, 1999.

**CASE NOTES**

**Cited** *International Ass’n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).



**§ 44-1802. Collective bargaining rights of firefighters — Representation by bargaining agent.** — The firefighters in any city, county, fire district or other political subdivision in the state of Idaho shall have the right to bargain collectively with their respective cities, counties, fire districts or political subdivisions and to be represented by a bargaining agent in such collective bargaining process as to wages, rates of pay, working conditions and all other terms and conditions of employment.

**History.**

1970, ch. 138, § 2, p. 333.

**CASE NOTES**

**Rights Violated.**

The contract the City of Boise made with the Idaho National Guard (IDANG) to provide Air Rescue Fire Fighting (ARFF) services at the Boise municipal airport did not violate the Idaho Constitution or the Idaho civil service act; however, the firefighters were entitled to collectively bargain in anticipation of the City's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members; and by refusing to negotiate with the union, the City violated this chapter. *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

**§ 44-1803. Recognition of exclusive bargaining agent.** — The organization selected by the majority of the firefighters in any city, county, fire district or political subdivision shall be recognized as the sole and exclusive bargaining agent for all of the firefighters in the fire department, unless and until recognition of such bargaining agent is withdrawn by vote of the majority of the firefighters of such department.

**History.**

1970, ch. 138, § 3, p. 333; am. 1977, ch. 98, § 2, p. 205.

**§ 44-1804. Obligation of corporate authorities to bargain in good faith — Entering into written contract.** — It shall be the obligation of the city, county, fire district or other political subdivision through its proper corporate authorities or their designees, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from said bargaining agent of the request by the firefighters for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations between the bargaining agent and the proper corporate authorities to be reduced to a written contract.

**History.**

1970, ch. 138, § 4, p. 333; am. 1977, ch. 95 § 1, p. 200; am. 1996, ch. 206, § 1, p. 630.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1996, ch. 206 declared an emergency. Approved March 12, 1996.

**CASE NOTES**

**Cited** *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

**§ 44-1805. Submission of issues to fact finding commission.** — In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to a fact finding commission.

**History.**

1970, ch. 138, § 5, p. 333.

**CASE NOTES**

**Cited** Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978).

**§ 44-1806. Appointment of fact-finding commission — Public officials and employees ineligible — Payment of expenses.** — Within five (5) days from the expiration of the thirty (30) day period referred to in [section 44-1805, Idaho Code](#), the bargaining agent and the corporate authorities shall each select and name one (1) member of a fact-finding commission respectively and shall immediately thereafter notify each other in writing of the names and addresses of the person so selected. The two (2) members so selected and named shall within ten (10) days from and after the expiration of the five (5) day period mentioned above, agree upon and appoint and name a third member. If on the expiration of the ten (10) day period the two (2) members are unable to agree upon the appointment of a third member, the director of the department of labor shall appoint such third member upon request in writing from either the bargaining agent or the corporate authorities. The third member of the fact-finding commission, whether appointed as result of agreement between the two (2) members selected by the bargaining agent and the corporate authorities, or appointed by the director, shall act as chairman of the fact-finding commission. No member of the fact-finding commission shall be an elected official, or employee of the city, county, fire district, or political subdivision affected. Any expenses incurred by the fact-finding commission shall be equally shared by the bargaining agent and the corporate authorities.

**History.**

1970, ch. 138, § 6, p. 333; am. 1996, ch. 421, § 21, p. 1406.

**STATUTORY NOTES**

**Cross References.**

Director of department of labor, § 72-1333 et seq.

**Amendments.**

The 1996 amendment, by ch. 421, § 21, amended this section to change “director of the department of labor and industrial services” to “director of the department of labor.”

**§ 44-1807. Negotiated agreements constitute contract.** — Any agreements actually negotiated between the bargaining agent and the corporate authorities either before or within thirty (30) days after the fact finding commission's recommendation shall constitute the collective bargaining contract governing the firefighters and said city, county, fire district, or political subdivision for the period stated therein.

**History.**

1970, ch. 138, § 7, p. 333; am. 1977, ch. 95, § 2, p. 200.

**§ 44-1808. Notice of request for bargaining on matters requiring appropriation.** — Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city, county, fire district or political subdivision are included as a matter of collective bargaining conducted under the provisions of this act, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities at least ninety (90) days before the last day on which money can be appropriated by the city, county, fire district or political subdivision to cover the contract period which is the subject of the collective bargaining procedure.

**History.**

1970, ch. 138, § 8, p. 333.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1970, Chapter 138, which is compiled as §§ 44-1801 to 44-1811.

**§ 44-1809. Notice of hearing before fact finding commission — Presentation of evidence — Determination by majority.** — (a) The fact finding commission shall appoint a time and place for hearing and cause notification to the parties consisting of the bargaining agent and the corporate authorities to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice requirement. The fact finding commission may adjourn the hearing from time to time as necessary, and on request of a party for good cause, or upon their own motion, may postpone the hearing. The fact finding commission may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(b) All interested parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the members of the fact finding commission but a majority may determine any question and render a recommendation. If, during the course of the hearing a member of the fact finding commission for any reason ceases to act or serve on said commission, the remaining members appointed to act may continue with the hearing and determination of the controversy.

**History.**

1970, ch. 138, § 9, p. 333.



**§ 44-1810. Written recommendation of commission — Copies to parties.** — The recommendation of the fact finding commission shall be in writing and signed by the members joining in the recommendation. The fact finding commission shall deliver a copy of the recommendation to the bargaining agent, corporate authorities, and any other party requesting such recommendation.

**History.**

1970, ch. 138, § 10, p. 333.

**§ 44-1811. Strikes prohibited during contract.** — Upon consummation and during the term of the written contract or agreement, no firefighter shall strike or recognize a picket line of any labor organization while in the performance of his official duties.

**History.**

1970, ch. 138, § 11, p. 333.

**STATUTORY NOTES**

**Effective Dates.**

Section 12 of S.L. 1970, ch. 138 declared an emergency. Approved March 9, 1970.

**CASE NOTES**

**Prohibition of Strikes.**

The express prohibition of strikes by this section does not support the inference that the legislature must have intended to permit strikes by public school employees or it would have expressly prohibited such strikes as it did those by firefighters. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

By expressly prohibiting strikes by firefighters during the term of a contract, the legislature either impliedly recognized their right to strike after expiration of the contract or, at a minimum, opened the door to such contractual agreement as the parties might reach in that regard. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

Strikes are prohibited after consummation and during the term of a written contract, but in that period of time after the old contract expires and before the new one is consummated, they are not prohibited and the parties are free to negotiate one way or another depending upon their relative economic strengths. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

**§ 44-1812. Minimum standards for employing paid firefighters.** — (1) No person may be employed as a paid firefighter as defined in sections 44-1801(1) and 59-1391(f), Idaho Code, until that person:

- (a) Has met and has been certified by the examining physician selected by the corporate authority as having met the minimum medical and health standards set forth in subsection (4) of this section;
- (b) Is at least eighteen (18) years of age at the time of appointment; and
- (c) Has met prescribed physical performance standards as adopted by the corporate authority.

(2) A true copy of the medical history of the applicant, completed and signed by the examining physician shall be sent to the corporate authority. Such records shall be furnished prior to the date of active employment of the applicant. If an applicant fails to meet the requirements of subsection (1) of this section, the applicant shall not be eligible for employment and the corporate authority shall provide notice of ineligibility to the applicant.

(3) Physical examination records shall be a part of the permanent file of the corporate authority.

(4) For purposes of this section, the phrase “minimum medical and health standards” shall mean the preplacement medical evaluation provisions of chapter 2-3 of the 1997 edition of NFPA 1582, the standard on medical requirements for firefighters published by the national fire protection association. The cost of the medical examination contemplated by this section is to be paid by the corporate authority, which shall make copies of NFPA 1582 available upon request.

(5) Nothing in this section shall apply to paid firefighters who are employed as such before October 1, 1980, as long as they continue in such employment; nor to promotional appointments after becoming a member of a fire department of any corporate authority; nor to the reemployment of a paid firefighter by the same or a different corporate authority within two (2) years after the termination of his employment; nor to the reinstatement of a paid firefighter who has been on military or disability leave, disability

retirement status, or who was terminated because of a reduction in force or leave of absence status.

### **History.**

I.C., § 72-1428, as added by 1974, ch. 59, § 2, p. 1136; am. 1976, ch. 316, § 1, p. 1084; am. 1977, ch. 97, § 1, p. 202; am. 1980, ch. 50, § 23, p. 79; am. 1983, ch. 90, § 1, p. 187; am. 1984, ch. 242, § 1, p. 588; am. and redesign. 1989, ch. 66, § 1, p. 105; am. 1995, ch. 188, § 1, p. 675; am. and redesign. 1996, ch. 421, § 15, p. 1406; am. 1999, ch. 50, § 2, p. 112.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section which was formerly compiled as § 72-1428, was amended and redesignated as § 44-109 by § 1 of S.L. 1989, ch. 66, and was subsequently amended and redesignated as this section by § 15 of S.L. 1996, ch. 421.

For further information on NFPA 1582, referred to in subsection (4), see <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1582>.

### **Effective Dates.**

Section 2 of S.L. 1976, ch. 316 declared an emergency and provided the act should be in full force and effect on and after approval. Approved April 1, 1976. Law without governor's signature, March 31, 1976.

Section 2 of S.L. 1977, ch. 97 declared an emergency. Approved March 17, 1977.

Section 2 of S.L. 1983, ch. 90 declared an emergency. Approved March 29, 1983.

Section 4 of S.L. 1999, ch. 50 declared an emergency. Approved March 11, 1999.



## Chapter 19

### SANITATION FACILITIES FOR FARM WORKERS

Sec.

44-1901. Statement of intent.

44-1902. Definitions.

44-1903. Furnishing of toilet facilities.

44-1904. Retaliatory actions.

44-1905. Violation — Penalty — Misdemeanor.

**§ 44-1901. Statement of intent.** — It is hereby declared that the legislature of the state of Idaho, by the passage of this act, recognizes that the provision of toilet facilities for workers working in fields in the growing and harvesting of crops is necessary to preserve sanitation and health and that the provision of these basic facilities is also necessary for the privacy and dignity of such workers.

**History.**

I.C., § 44-1901, as added by 1981, ch. 256, § 1, p. 547.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1981, Chapter 256, which is compiled as §§ 44-1901 to 44-1905.

**§ 44-1902. Definitions.** — As used in this chapter, the following terms have the following meanings:

(1) “Farm operation” means any activity by which a crop is planted, grown, tended, cultivated or harvested, in which eight (8) or more workers are working as a crew, unit or group for a period of four (4) or more hours.

(2) “Farm operator” means any individual, partnership, corporation, or other legal entity, or any officer or agent acting on behalf of such individual, partnership, corporation, or legal entity, which is the owner in possession, or lessee of, a farming operation, or which is responsible for its management condition.

(3) “Farm labor contractor” means any person who, for a fee, furnishes workers to a farm operator.

(4) “Reasonable distance” means a distance within one-quarter ( $\frac{1}{4}$ ) mile or less of the place of work. When, because of the layout of access roads, ground terrain, or other physical conditions, it is not possible to comply with the foregoing requirement, toilet facilities shall be located at the point of vehicular access closest to the workers.

(5) “Toilet facility” means a facility, including a portable facility, which contains a toilet designed to provide privacy, to prevent contamination of crops and adjoining water supplies.

**History.**

I.C., § 44-1902, as added by 1981, ch. 256, § 1, p. 547.



**§ 44-1903. Furnishing of toilet facilities.** — On any farm operation, the farm operator, or when workers are furnished by a farm labor contractor, the farm labor contractor, shall provide and maintain at least one (1) toilet facility in a clean and sanitary condition for every forty (40) workers, or fraction thereof, within a reasonable distance of where the workers are working. For farm operations employing fewer than forty (40) workers, at least one (1) toilet facility shall be provided.

**History.**

I.C., § 44-1903, as added by 1981, ch. 256, § 1, p. 547.

**§ 44-1904. Retaliatory actions.** — No farm operator or farm labor contractor may discharge or in any manner retaliate against any worker because the worker has instituted or is about to institute any proceedings under this chapter, or has testified, or is about to testify, in any proceedings under or related to the provisions of this chapter.

**History.**

I.C., § 44-1904, as added by 1981, ch. 256, § 1, p. 547.

**§ 44-1905. Violation — Penalty — Misdemeanor.** — Any farm operator or farm labor contractor who willfully or negligently violates [section 44-1903, Idaho Code](#), shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) for each violation.

**History.**

[I.C., § 44-1905](#), as added by 1981, ch. 256, § 1, p. 547.



## Chapter 20

### RIGHT TO WORK

Sec.

44-2001. Declaration of public policy.

44-2002. Labor organization.

44-2003. Freedom of choice guaranteed, discrimination prohibited.

44-2004. Voluntary payments protected.

44-2005. Agreements in violation, and actions to induce such agreements, declared illegal.

44-2006. Coercion and intimidation prohibited.

44-2007. Penalties.

44-2008. Civil remedies.

44-2009. Duty to investigate.

44-2010. Prospective application.

44-2011. Applicability.

44-2012. Prohibited activity.

44-2013. Public works — Wages.

44-2014. Severability.

**§ 44-2001. Declaration of public policy.** — It is hereby declared to be the public policy of the state of Idaho, in order to maximize individual freedom of choice in the pursuit of employment and to encourage an employment climate conducive to economic growth, that the right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization.

**History.**

I.C., § 44-2001, as added by 1985, ch. 2, § 1, p. 4.

**STATUTORY NOTES**

**Compiler's Notes.**

Sections 44-2001 to 44-2010, and 44-2014, which were added in 1985, were the subject of a referendum to approve the sections voted on at the general election, November 4, 1986. Such referendum passed by a vote of 208,248 for and 177,069 against.

**CASE NOTES**

**Effective Date.**

The legislature of this state is authorized by Idaho Const., Art. III, § 22, to declare an emergency and thereby render an act effective immediately upon its passage; the people of this state are statutorily authorized by § 34-1803 to approve or reject that legislation at the next biennial election. Hence, H.B. 2 (Acts 1985, ch. 2; §§ 44-2001 — 44-2011), designated as an emergency bill by the legislature, was effective immediately and would continue to be effective until the next biennial election, and thereafter only if approved by the voters. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of state right-to-work provisions. 105 A.L.R.5th 243.

**§ 44-2002. Labor organization.** — The term “labor organization” means any organization of any kind, or agency or employee representation committee or union, which exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

**History.**

I.C., § 44-2002, as added by 1985, ch. 2, § 1, p. 4.



**§ 44-2003. Freedom of choice guaranteed, discrimination prohibited.**

— No person shall be required, as a condition of employment or continuation of employment, (1) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization, or, (2) to become or remain a member of a labor organization, or, (3) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization, or, (4) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization, or, (5) to be recommended, approved, referred, or cleared by or through a labor organization.

**History.**

I.C., § 44-2003, as added by 1985, ch. 2, § 1, p. 4.

**CASE NOTES**

**Right to Work.**

Idaho has chosen to prohibit agreements requiring non-union members to pay representation fees. The state is expressly authorized to do so under § 14(b) (29 U.S.C.S. § 164(b)) of the National Labor Relations Act (NLRA), 29 U.S.C.S. § 151 et seq.; consequently, Idaho's right to work law is not preempted by the NLRA. *Int'l Union of Operating Eng'rs Local 370 v. Wasden*, 217 F. Supp. 3d 1209 (D. Idaho 2016).

**§ 44-2004. Voluntary payments protected.** — (1) It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

(2) Deductions for political activities as defined in chapter 26, title 44, Idaho Code, shall not be deducted from the wages, earnings or compensation of an employee.

(3) Nothing in this chapter shall prohibit an employee from personally paying contributions for political activities as defined in chapter 26, title 44, Idaho Code, to a labor organization unless such payment is prohibited by law.

### **History.**

I.C., § 44-2004, as added by 1985, ch. 2, § 1, p. 4; am. 2003, ch. 97, § 2, p. 311.

## **CASE NOTES**

### **Constitutionality.**

**First Amendment** does not confer an affirmative right to use government payrolls to collect funds for union political activities, or prevent a state from deciding its local governments should not provide payroll deductions for such activities. *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 129 S. Ct. 1093, 172 L. Ed. 2d 770 (2009).

**Cited** *Pocatello Educ. Ass'n v. Heideman*, 504 F.3d 1053 (9th Cir. 2007).

## **RESEARCH REFERENCES**

**ALR.** — Constitutional challenges to compelled speech — General principles. 72 A.L.R.6th 513.

**§ 44-2005. Agreements in violation, and actions to induce such agreements, declared illegal.** — Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and employer which violates the rights of employees as guaranteed by provisions of this chapter is hereby declared to be unlawful, null and void, and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement prohibited under this chapter is hereby declared to be for an illegal purpose and is a violation of the provisions of this chapter.

**History.**

I.C., § 44-2005, as added by 1985, ch. 2, § 1, p. 4.

**§ 44-2006. Coercion and intimidation prohibited.** — It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this chapter. It shall also be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

**History.**

I.C., § 44-2006, as added by 1985, ch. 2, § 1, p. 4.

**§ 44-2007. Penalties.** — Any person who directly or indirectly violates any provision of this chapter, excluding the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

**History.**

I.C., § 44-2007, as added by 1985, ch. 2, § 1, p. 4; am. 2012, ch. 312, § 1, p. 860.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 312, inserted “excluding the provisions of sections 44-2012 and 44-2013, Idaho Code” near the beginning of the section.

**§ 44-2008. Civil remedies.** — Any employee injured as a result of any violation or threatened violation of the provisions of this chapter, excluding the provisions of sections 44-2012 and 44-2013, Idaho Code, shall be entitled to injunctive relief against any and all violators or persons threatening violations and may in addition thereto recover any and all damages, including costs and reasonable attorney's fees, of any character resulting from such violation or threatened violation. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this chapter.

**History.**

**I.C., § 44-2008**, as added by 1985, ch. 2, § 1, p. 4; am. 2012, ch. 312, § 2, p. 860.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 312, inserted “excluding the provisions of sections 44-2012 and 44-2013, Idaho Code” in the first sentence.

**§ 44-2009. Duty to investigate.** — It shall be the duty of the prosecuting attorneys of each county and of the attorney general of this state, to investigate complaints of violation or threatened violations of this chapter and to prosecute all persons violating any of its provisions, and to take all means at their command to ensure its effective enforcement.

**History.**

I.C., § 44-2009, as added by 1985, ch. 2, § 1, p. 4.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**CASE NOTES**

**Ex Parte Young Jurisdiction.**

By logical extension, the plain language of this section empowers the attorney general to enforce or give effect to the Open Access to Work Act beyond prosecuting criminal violations, i.e., to take all means at his command, including initiating civil enforcement actions, to ensure the effective enforcement of the Open Access Act. This duty provides the requisite connection between the attorney general and the Open Access Act for purposes of *Ex Parte Young* jurisdiction. *Idaho Bldg. & Constr. Trades Council v. Wasden*, 32 F. Supp. 3d 1143 (D. Idaho 2014).

**§ 44-2010. Prospective application.** — The provisions of this chapter shall apply to all contracts entered into after the effective date of this chapter and shall apply to any renewal or extension of any existing contract.

**History.**

I.C., § 44-2010, as added by 1985, ch. 2, § 1, p. 4.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this chapter” refers to the effective date of S.L. 1985, Chapter 2, which was effective January 31, 1985.



**§ 44-2011. Applicability.** — The provisions of this chapter are applicable to all employment, private and public, including all employees of the state and its political subdivisions.

**History.**

I.C., § 44-2011, as added by 1995, ch. 178, § 2, p. 662.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 44-2011 was amended and redesignated as § 44-2012 by § 1 of S.L. 1995, ch. 178 and was amended and redesignated as § 44-2013 by § 2 of S.L. 2011, ch. 32. However, because another § 44-2013 was enacted by S.L. 2011, ch. 31, § 2, the amended section was redesignated through the use of brackets, as § 44-2014. That redesignation was made permanent by S.L. 2015, ch. 244, § 25, effective July 1, 2015.

**§ 44-2012. Prohibited activity.** — (1) The provisions of this act shall be known as the “Fairness in Contracting Act.” The intent of this act is to promote fairness in bidding and contracting.

(2) No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement or rebate on behalf of its employees, or provide the same to its employees, the source of which is wages, dues or assessments collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments.

(3) No labor organization may directly or indirectly pay a wage subsidy or wage rebate to its members in order to directly or indirectly subsidize a contractor or subcontractor, the source of which is wages, dues or assessments collected by or on behalf of its members, whether or not labeled as dues or assessments.

(4) It is illegal to use any fund financed by wages collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments, to subsidize a contractor or subcontractor doing business in the state of Idaho.

(5) Any contractor, subcontractor or labor organization that violates the provisions of this section shall be guilty of a misdemeanor and fined an amount not to exceed ten thousand dollars (\$10,000) for a first offense, twenty-five thousand dollars (\$25,000) for a second offense, and one hundred thousand dollars (\$100,000) for each and every additional offense.

(6) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement in violation of the provisions of this section, and such interested party shall be awarded costs and attorney’s fees in the event that such challenge prevails.

### **History.**

I.C., § 44-2012, as added by 2011, ch. 32, § 1, p. 75.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” in subsection (1) refers to S.L. 2011, Chapter 32, which is codified as §§ 44-2012 and 44-2014.

### **CASE NOTES**

#### **Federal Preemption.**

Idaho's Fairness in Contracting Act was preempted by National Labor Relations Act as most of the conduct prohibited by that Act was protected by [National Labor Relations Act. Idaho Bldg. & Constr. Trades Council v. Inland Pac. Chptr. & Contrs.](#), 801 F.3d 950 (9th Cir. 2015).

Idaho's Fairness in Contracting Act's prohibition against use of job targeting funds which are derived in part from wages earned on federal projects governed by the Davis-Bacon Act was likely preempted by Davis-Bacon itself; decisions of the NLRB made clear that distribution of funds derived in part from Davis-Bacon wages was, at least arguably, protected by the [National Labor Relations Act. Idaho Bldg. & Constr. Trades Council v. Inland Pac. Chptr. & Contrs.](#), 801 F.3d 950 (9th Cir. 2015).

**§ 44-2013. Public works — Wages.** — Notwithstanding any other provision found in chapter 10, title 44, Idaho Code, and chapter 57, title 67, Idaho Code, the following shall apply:

- (1) This act shall be known as the “Open Access to Work Act.”
- (2) For purposes of this section, the following terms have the following meanings:
  - (a) “Political subdivision” means the state of Idaho, or any county, city, school district, sewer district, fire district, or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof.
  - (b) “Public works” shall have the same meaning as that provided for “public works construction” in [section 54-1901, Idaho Code](#).
- (3)(a) Except as provided in subsection (3)(b) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:
  - (i) A predetermined amount of wages or wage rate; or
  - (ii) A type, amount or rate of employee benefits.
- (b) Subsection (3)(a) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.
- (4) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works executes or otherwise becomes a party to any project labor

agreement, collective bargaining agreement, prehire agreement or any other agreement with employees, their representatives or any labor organization as a condition of bidding, negotiating, being awarded or performing work on a public works project.

(5) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violated the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(6) The provisions of this section apply to any contract executed after July 1, 2011.

### **History.**

I.C., § 44-2013, as added by 2011, ch. 31, § 2, p. 74.

## **STATUTORY NOTES**

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 31 provided: "Legislative Intent. It is the intent of the Legislature to maintain and strengthen law to protect open access to work for all Idahoans."

### **Compiler's Notes.**

The term "this act" in subsection (1) refers to S.L. 2011, Chapter 31, which is codified as this section.

S.L. 2011, ch. 32, § 2 redesignated former § 44-2012 as § 44-2013, effective July 1, 2011. However, S.L. 2011, ch. 31, § 2 enacted a new section designated as § 44-2013, also effective July 1, 2011. The code section affected by S.L. 2011, ch. 32 was redesignated, through the use of brackets, as § 44-2014. That redesignation was made permanent by S.L. 2015, ch. 244, § 25.

Section 3 of S.L. 2011, ch. 31 provided "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 44-2014. Severability.** — The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

### **History.**

**I.C., § 44-2011**, as added by 1985, ch. 2, § 1, p. 4; am. and redesign. 1995, ch. 178, § 1, p. 662; am. and redesign. 2011, ch. 32, § 2, p. 75; am. 2015, ch. 244, § 25, p. 1008.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 32, redesignated this section from § 44-2012.

The 2015 amendment, by ch. 244, redesignated this section from § 44-2013.

### **Compiler's Notes.**

This section was formerly compiled as § 44-2011. It was redesignated as § 44-2012 by S.L. 1995, ch. 178, § 1. S.L. 2011, ch. 32, § 2 redesignated that former § 44-2012 as § 44-2013, effective July 1, 2011. However, S.L. 2011, ch. 31, § 2 enacted a new section designated as § 44-2013, also effective July 1, 2011. The code section enacted as § 44-2011 and redesignated by S.L. 2011, ch. 32, was redesignated, through the use of brackets, as § 44-2014. That redesignation was made permanent by S.L. 2015, ch. 244, § 25, effective July 1, 2015.

### **Effective Dates.**

Section 2 of S.L. 1985, ch. 2 declared an emergency. Became law upon legislative override of governor's veto, January 31, 1985.





## Chapter 21

# MANUFACTURED HOME DEALER AND INSTALLER LICENSING

Sec.

44-2101. Purpose — License required — Reinstatement.

44-2101A. Definitions.

44-2102. Administration — Powers and duties.

44-2102A. Exceptions to chapter. [Repealed.]

44-2103. Fees — Deposit of fees.

44-2104. Factory built structures advisory board.

44-2105. Discipline — Hearing — Judicial review — Reapplication.

44-2106. Violations.

44-2107. Penalty provisions.

44-2108. Retailer — Additional licensure requirements.

**§ 44-2101. Purpose — License required — Reinstatement.** — (1) The legislature finds that the regulation and control of those persons engaged in the business of manufacturing, selling or installing manufactured and mobile homes is necessary to protect the health and safety of the citizens of Idaho. To that end, it shall be unlawful for any person to engage in business as a manufacturer, retailer, or installer without being duly licensed as provided in this chapter.

(2) If the licensee fails to submit a completed application for renewal or to pay the renewal fee on or before the expiration date, the administrator may accept a later application for reinstatement subject to such conditions as the board may require by rule including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of reinstatement of the license, the rights of the licensee under such license shall be expired and, during such period of expiration, it shall be unlawful for such licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions in [section 44-2101A, Idaho Code](#), in consideration of compensation of any kind or expectation thereof. An expired license that is not reinstated within six (6) months of the expiration date shall be automatically terminated by the administrator and may not be reinstated.

### **History.**

[I.C., § 44-2101](#), as added by 1993, ch. 372, § 1, p. 1339; am. 2004, ch. 313, § 2, p. 878; am. 2007, ch. 112, § 1, p. 321; am. 2013, ch. 57, § 1, p. 131; am. 2020, ch. 129, § 1, p. 409.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 44-2101 was amended and redesignated as § 44-2101A by § 2 of S.L. 1993, ch. 372, and then was repealed by S.L. 2007, ch. 112, § 2.

### **Amendments.**

The 2007 amendment, by ch. 112, added “reinstatement” in the section catchline; added the subsection (1) designation, and therein inserted “and mobile” in the first sentence, and in the second sentence, deleted “of manufactured homes, a manufactured home dealer” following “business as a manufacturer,” and substituted “retailer, resale broker, installer, service company, salesman or responsible managing employee” for “manufactured home installer, manufactured home service company or a manufactured home salesman”; and added subsections (2) and (3).

The 2013 amendment, by ch. 57, in subsection (1), substituted “selling or installing manufactured” for “selling, installing or servicing of manufactured” near the middle of the first sentence and deleted “service company” preceding “salesman or responsible” near the middle of the last sentence; and rewrote subsection (2), which formerly read: “On and after July 1, 2007, all applicants for retailer or resale broker original licensure will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure must submit a full set of the applicant’s fingerprints and any relevant fees directly to the Idaho state police and the federal bureau of investigation identification division for this purpose.”

The 2020 amendment, by ch. 128, substituted “retailer, or installer without being duly licensed as provided in this chapter” for “retailer, resale broker, installer, salesman or responsible managing employee without being duly licensed as provided in this chapter” near the end of subsection (1); deleted former subsection (2), which read: “All applicants for original retailer or resale broker licenses are required to submit to a fingerprint-based criminal history background check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure must submit a full set of the applicant’s fingerprints and the fees to cover the cost of the criminal history background check for such person along with the completed application”; and redesignated former subsection (3) as present subsection (2).

**§ 44-2101A. Definitions.** — As used in this chapter:

(1) “Administrator” means the administrator of the division of building safety of the state of Idaho.

(2) “Board” means the factory built structures advisory board established in [section 39-4302, Idaho Code](#).

(3) “Engaged in the business” means the individual or entity buys, sells, brokers, trades, or offers for resale a manufactured or mobile home.

(4) “Installer” means a person who owns a business that installs a manufactured home or mobile home at the site where it is to be used for occupancy.

(5) “Manufactured home” or “manufactured house” means a structure as defined in [section 39-4105, Idaho Code](#).

(6) “Manufacturer” means any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease or exchange in the state of Idaho.

(7) “Mobile home” means a structure as defined in [section 39-4105, Idaho Code](#).

(8) “Person” means a natural person, corporation, partnership, trust, society, club, association or other organization.

(9) “Place of business” refers to any physical location at which the business is lawfully conducted.

(10) “Retailer” means any person engaged in the business of selling or exchanging new, used, resale, third-party-owned, or brokered manufactured or mobile homes.

**History.**

[I.C., § 44-2101A](#), as added by 2007, ch. 112, § 3, p. 321; am. 2008, ch. 380, § 1, p. 1050; am. 2013, ch. 57, § 2, p. 131; am. 2016, ch. 342, § 8, p. 968; am. 2020, ch. 129, § 2, p. 409.

**STATUTORY NOTES**

## **Cross References.**

Division of building safety, § 67-2601A.

## **Prior Laws.**

Former § 44-2101A, which comprised **I.C., § 44-2101**, as added by 1988, ch. 264, § 1, p. 519; am. 1989, ch. 21, § 1, p. 24; am. and redesign. 1993, ch. 372, § 2, p. 1339; am. 1996, ch. 421, § 28, p. 1406; am. 1997, ch. 228, § 1, p. 666; am. 2002, ch. 345, § 33, p. 963; am. 2004, ch. 313, § 3, p. 878, was repealed by S.L. 2007, ch. 112, § 2.

## **Amendments.**

The 2008 amendment, by ch. 380, inserted “installer, manufacturer, service company” in subsection (11).

The 2013 amendment, by ch. 57, deleted “service company” preceding “or resale broker” near the middle of subsection (11) and deleted former subsection (14), which read: “Service company’ means any person other than an installer who provides service, repair or tear down of manufactured or mobile homes.”

The 2016 amendment, by ch. 342, in subsection (2), substituted “factory built structures advisory board” for “manufactured housing board” and “section 39-4302” for “section 44-2104”.

The 2020 amendment, by ch. 128, deleted former subsections (10) and (11), which read: “(10) ‘Resale broker’ means any person engaged in the business of selling broker-owned, used, third-party owned, or other resale of manufactured or mobile homes. (11) ‘Responsible managing employee’ or ‘RME’ means the person designated by the retailer, installer, manufacturer or resale broker to supervise other employees, either personally or through others”; redesignated former subsection (12) as present subsection (10); inserted “third-party-owned” near the end of present subsection (10); and deleted former subsection (13), which read: “‘Salesman’ means any person employed by a retailer or resale broker for a salary, commission or compensation of any kind to sell, list, purchase or exchange or to negotiate for the sale, listing, purchase or exchange of new, used, brokered or third-party owned units, except as otherwise provided in this chapter.”

## **CASE NOTES**

**Cited** *In re Peters*, 168 Bankr. 710 (Bankr. D. Idaho 1994).

## **RESEARCH REFERENCES**

**ALR.** — What is “mobile home,” “house trailer,” “trailer house,” or “trailer” within meaning of restrictive covenant. 83 A.L.R.5th 651.

**§ 44-2102. Administration — Powers and duties.** — The administrator is charged with the administration of the provisions of this chapter and shall:

(1) In accordance with the provisions of chapter 52, title 67, Idaho Code, promulgate, adopt, amend, and repeal necessary rules for the establishment of a mandatory statewide manufactured home setup code. The administrator may also define and prohibit any practice which is found to be deceptive.

(2) Prescribe the form and content of a new manufactured home buyer's information and disclosure form. Unless otherwise provided by the administrator, the form shall be presented by the retailer to each purchaser of a new manufactured home and shall be executed by the retailer and purchaser at the time the initial purchase order is signed for the sale of a new manufactured home.

(3)(a) A used unit that has been determined to be or declared by the owner to be real property under the provisions of [section 63-304, Idaho Code](#), may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman representing a licensed real estate broker, but not a retailer.

(b) A used unit that has been determined to be and is carried on the tax rolls as personal property may be offered for sale, listed, bought for resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman, pursuant to chapter 20, title 54, Idaho Code, or by a licensed retailer, but with respect to a licensed retailer only to the extent such sale does not involve the purchase or sale of an interest in real estate.

(c) A licensed real estate broker or real estate salesman representing a licensed real estate broker, pursuant to chapter 20, title 54, Idaho Code, may participate in new manufactured home sales that include real estate if the real estate broker or salesman has a valid, written agreement with a licensed retailer to represent the interests of the retailer in this type of transaction.

(4) Promulgate rules establishing a program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes. The rules shall be consistent with the United States department of housing and urban development's procedural and enforcement authority in [42 U.S.C. 5422\(c\)\(12\)\[\(13\)\]](#), and shall include identifying the respective responsibilities of manufacturers, retailers, and installers; providing for the issuance of appropriate orders for the correction or repair of defects in manufactured homes that are reported during the one (1) year period following the date of installation; and may include an appropriate schedule of fees.

### **History.**

[I.C., § 44-2102](#), as added by 1988, ch. 264, § 1, p. 519; am. 1990, ch. 165, § 1, p. 362; am. 1996, ch. 322, § 43, p. 1029; am. 1996, ch. 421, § 29, p. 1406; am. 1997, ch. 107, § 1, p. 251; am. 1999, ch. 171, § 1, p. 461; am. 2000, ch. 439, § 1, p. 1398; am. 2004, ch. 243, § 1, p. 708; am. 2004, ch. 313, § 4, p. 878; am. 2007, ch. 112, § 4, p. 321; am. 2020, ch. 129, § 3, p. 409.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 243, added subsection (4).

The 2004 amendment, by ch. 313, deleted “broker” following “manufactured home dealer” two times in subsection (3)(b).

The 2007 amendment, by ch. 112, in subsections (2) and (3)(c), twice substituted “retailer” for references to “manufactured home dealer”; in subsections (3)(a) and (3)(c), inserted “real estate”; in subsections (3)(a) and (3)(b), substituted “retailer, resale broker” for “manufactured home dealer,” and deleted “manufactured home” preceding “salesman”; and in subsection (4), twice inserted “resale brokers” following “retailers.”

The 2020 amendment, by ch. 128, in subsection (1), inserted “necessary” near the middle of the first sentence and substituted “may” for “shall” near



the beginning of the last sentence; in subsection (3), in paragraph (a), deleted “resale broker or salesman” at the end and, in paragraph (b), substituted “that” for “which” near the beginning and substituted “licensed retailer, but with respect to a licensed retailer only” for “licensed retailer, resale broker or salesman, but with respect to a licensed retailer, resale broker or salesman only” near the end; and, in subsection (4), deleted “resale brokers” preceding “and installers” near the middle of the first sentence and near the middle of last sentence.

### **Compiler’s Notes.**

The bracketed insertion in the second sentence in subsection (4) was added by the compiler as the HUD enforcement powers are currently found in [42 U.S.C.S. § 5422\(c\)\(13\)](#).

## **RESEARCH REFERENCES**

**ALR.** — What is “mobile home,” “house trailer,” “trailer house,” or “trailer” within meaning of restrictive covenant. [83 A.L.R.5th 651](#).

**§ 44-2102A. Exceptions to chapter. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 44-2102A, as added by 1989, ch. 21, § 2, p. 24, was repealed by S.L. 1990, ch. 165, § 2.

**§ 44-2103. Fees — Deposit of fees.** — (1) Fees for licensing of retailers, installers, and manufacturers shall not exceed:

- (a) Retailer license ..... \$500.00
- (b) Manufacturer license ..... \$500.00
- (c) Installer license ..... \$300.00

(2) All license fees collected by the division of building safety under the provisions of this chapter shall be paid into the factory built structures account established in [section 39-4303, Idaho Code](#). The expenses incurred in administering and enforcing the provisions of this chapter shall be paid from the account.

(3) The following performance bonding requirements shall be met before the issuance of these licenses: (a) Manufacturer ..... \$20,000 bond (b) Retailer ..... \$40,000 bond

- (c) Installer ..... \$5,000 bond

(4) The administrator is authorized to provide by rule, in accordance with the provisions of [section 44-2102, Idaho Code](#), for the acceptance of a deposit of cash or securities in lieu of a bond in satisfaction of the bonding requirements of this section.

(5) Fees and bond requirements of this section shall be the exclusive fee and bond requirements for retailers, installers, and manufacturers governed by the provisions of this chapter and shall supersede any program of any political subdivision of the state that sets fee or bond requirements for the same services.

(6) A retailer must obtain a separate installer license, pay the license fee set forth in subsection (1)(c) of this section and meet the bonding requirements of subsection (3)(c) of this section in order to provide the services covered by an installer license.

### **History.**

[I.C., § 44-2103](#), as added by 1988, ch. 264, § 1, p. 519; am. 1993, ch. 372, § 3, p. 1339; am. 1995, ch. 202, § 1, p. 694; am. 1996, ch. 171, § 1, p.

554; am. 1996, ch. 421, § 30, p. 1406; am. 2004, ch. 313, § 5, p. 878; am. 2007, ch. 112, § 5, p. 321; am. 2013, ch. 57, § 3, p. 131; am. 2016, ch. 342, § 9, p. 968; am. 2020, ch. 129, § 4, p. 409.

## **STATUTORY NOTES**

### **Cross References.**

Division of building safety, § 67-2601A.

### **Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 171, § 1, added subdivision (5).

The 1996 amendment, by ch. 421, § 30, substituted “division of building safety” for “department” in subdivision (2) and “administrator” for “director” in subdivision (4).

The 2007 amendment, by ch. 112, in subsection (1), twice substituted references to “retailers, resale brokers” or similar language for references to “manufactured home dealers” and “RMEs” for “responsible managing employees,” and deleted “Manufactured home” from the beginning of subsections (1)(c) and (1)(d); in subsection (3)(b), substituted “Retailer” for “Manufactured home dealer,” and doubled the bond amount; added subsection (3)(c), redesignated former subsection (3)(c) as (3)(d), and therein deleted “Manufactured home” from the beginning; in subsection (4), substituted “deposit of cash or securities” for “money deposit”; in subsection (5), substituted “retailers, resale brokers” for “dealers”; and added subsection (6).

The 2013 amendment, by ch. 57, in subsection (1), substituted “salesmen and RMEs shall not exceed” for “salesmen, RMEs and service companies shall not exceed” at the end of the introductory paragraph and deleted “Service company or” at the beginning of paragraph (c); deleted “Service company or” from the beginning of paragraph (3)(d); substituted “manufacturers and salesmen” for “manufacturers, salesmen and service companies” near the middle of subsection (5); and, in subsection (6), deleted “service company or” following “obtain a separate” near the

beginning and substituted “an installer license” for “a service company or installer license” at the end.

The 2016 amendment, by ch. 342, rewrote the first sentence in subsection (2), which formerly read: “All license fees collected by the division of building safety under the provisions of this chapter shall be paid into the manufactured housing account, which is hereby created in the dedicated fund”.

The 2020 amendment, by ch. 128, in subsection (1), rewrote the introductory paragraph, which formerly read: “Fees for licensing of retailers, resale brokers, installers, manufacturers, salesmen and RMEs shall not exceed”, deleted “or resale broker” following “Retailer” at the beginning of paragraph (a), and deleted paragraphs (d) and (e), which read: “(d) Salesman license . . . \$50.00 (e) RME license . . . \$50.00”; in subsection (3), deleted former paragraph (c), which read: “Resale broker . . . \$30,000 bond” and redesignated former paragraph (d) as present paragraph (c); in subsection (5), substituted “retailers, installers, and manufacturers governed” for “retailers, resale brokers, installers, manufacturers and salesmen governed” near the beginning; and, in subsection (6), deleted “or resale broker” following “retailer” at the beginning and substituted “subsection (3)(c) of this section” for “subsection (3)(d) of this section” near the end.

**§ 44-2104. Factory built structures advisory board.** — (1) The factory built structures advisory board, established in the division of building safety in accordance with the provisions of [section 39-4302, Idaho Code](#), shall advise the administrator in the administration and enforcement of the provisions of this chapter.

(2) The board shall have the authority to promulgate rules in accordance with chapter 52, title 67, Idaho Code.

### **History.**

[I.C., § 44-2104](#), as added by 1988, ch. 264, § 1, p. 519; am. 1996, ch. 334, § 1, p. 1131; am. 1996, ch. 421, § 31, p. 1406; am. 2000, ch. 439, § 2, p. 1398; am. 2001, ch. 151, § 2, p. 546; am. 2007, ch. 112, § 6, p. 321; am. 2016, ch. 342, § 10, p. 968.

## **STATUTORY NOTES**

### **Cross References.**

Division of building safety, § 67-2601A.

### **Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 334, § 1, in subsection (1), in the first sentence deleted “as a complaint and appeals board and” preceding “to advise the”, in the second sentence added “, four (4) of whom shall be” following “by the governor” and added “and one (1) of whom shall be a consumer who lives in a manufactured home” following “manufactured home dealers”, and added the present fourth sentence.

The 1996 amendment, by ch. 421, § 31, substituted “division of building safety” for “department” and substituted “administrator” for “director” throughout the section.

The 2007 amendment, by ch. 112, in the section catchline and in the first sentence of subsection (1), substituted “manufactured housing board” for

“manufactured home advisory board”; in subsection (1), substituted “shall be licensed retailers” for “shall be from licensed manufactured home dealers” in the second sentence, and substituted the present third sentence for the former third, fourth, and fifth sentences, which read: “The board shall serve the following terms commencing January 1, 1989: two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. The consumer member shall be a member appointed to a term beginning on January 1, 1996, or as soon thereafter as there is a vacancy on the board. Thereafter board members shall be appointed for a term of three (3) years.”

The 2016 amendment, by ch. 342, rewrote the section to the extent that a detailed comparison is impracticable.

#### **Effective Dates.**

Section 2 of S.L. 1996, ch. 334 declared an emergency. Approved March 18, 1996.

**§ 44-2105. Discipline — Hearing — Judicial review — Reapplication.**

— (1) The administrator may refuse to issue, renew, or reinstate or may suspend, revoke or take other disciplinary action against any license, if the license was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any provision of this chapter or the rules adopted thereunder, or has been convicted of conduct constituting a felony or any theft or fraud offense, or has ever had a business license revoked in this or any other state or territory of the United States.

(2) The administrator shall have the power to appoint, by an order in writing, any competent person to take testimony at any disciplinary hearing. The administrator, and any hearing officer appointed by the administrator, shall have the power to administer oaths, issue subpoenas and compel the attendance of witnesses and the production of documents and records.

(3) Before any license shall be suspended, revoked or otherwise disciplined, the holder thereof shall be served with written notice enumerating the charges against him, and shall be afforded an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. The notice shall specify the time and place for hearing, which time shall not be less than five (5) days after the service thereof.

(4) Any party aggrieved by an order of the administrator disciplining a license shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(5) Any person whose license has been revoked may not apply for a new license until the expiration of one (1) year from the date of such revocation.

**History.**

**I.C., § 44-2105**, as added by 1993, ch. 372, § 5, p. 1339; am. 1996, ch. 421, § 32, p. 1406; am. 2007, ch. 112, § 7, p. 321.

**STATUTORY NOTES**



**Prior Laws.**

Former § 44-2105, which comprised I.C., § 44-2105, as added by 1988, ch. 264, § 1, p. 519, was repealed by S.L. 1993, ch. 372, § 4, effective July 1, 1993.

**Amendments.**

The 2007 amendment, by ch. 112, in the section catchline and in subsection (4), substituted “discipline” for “suspension or revoking,” or similar language; in subsection (1), inserted “refuse to issue, renew, or reinstate or may” and “or take other disciplinary action against,” and added the language beginning “or has been convicted of conduct constituting a felony”; in the first sentence in subsection (2), substituted “at any disciplinary hearing” for “at a hearing conducted for the purposes of determining whether a license should be suspended or revoked”; and in subsection (3), inserted “or otherwise disciplined.”

**§ 44-2106. Violations.** — (1) It shall be unlawful to engage in business as a manufacturer, retailer, or installer without being duly licensed by the division of building safety pursuant to this chapter, except that an individual may buy, sell, broker, trade or offer for resale up to two (2) manufactured or mobile homes, or a combination thereof, in any one (1) calendar year without being licensed under this chapter if all of the units have been properly titled in the name of that individual.

(2) It shall be unlawful for a manufacturer, retailer, installer, or those employed by such to:

(a) Intentionally publish or circulate any advertising that is misleading or inaccurate in any material particular or that misrepresents any of the products or services sold or provided by a manufacturer, retailer, or installer;

(b) Violate any of the provisions of this chapter or any rule adopted by the division of building safety pursuant to this chapter;

(c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen manufactured or mobile home;

(d) With respect only to a retailer, to engage in the business for which such retailer is licensed without at all times maintaining a principal place of business located within the state.

### **History.**

**I.C., § 44-2106**, as added by 1993, ch. 372, § 6, p. 1339; am. 1996, ch. 421, § 33, p. 1406; am. 2004, ch. 313, § 6, p. 878; am. 2007, ch. 112, § 8, p. 321; am. 2013, ch. 57, § 4, p. 131; am. 2020, ch. 129, § 5, p. 409.

## **STATUTORY NOTES**

### **Cross References.**

Division of building safety, § 67-2601A.

### **Amendments.**

The 2007 amendment, by ch. 112, deleted the term “manufactured home” from the section; substituted “retailer” for “dealer” and included resale brokers in coverage of the section; and added the exception in subsection (1).

The 2013 amendment, by ch. 57, deleted “service company” preceding “or RME” near the beginning of subsection (1), near the end of the introductory paragraph in subsection (2), and near the end of paragraph (2) (a).

The 2020 amendment, by ch. 128, substituted “retailer, or installer without” for “retailer, resale broker, installer, salesman or RME without” near the beginning of subsection (1); and, in subsection (2), substituted “retailer, installer, or those employed by such to” for “retailer, resale broker, installer, salesman or RME to” at the end of the introductory paragraph, in paragraph (a), substituted “retailer, or installer” for “retailer, resale broker, installer, salesman or RME” at the end and deleted “or resale broker” following “retailer” twice in paragraph (d).

### **Compiler’s Notes.**

Former § 44-2106 was amended and redesignated as § 44-2107 by § 7 of S.L. 1993, ch. 372.

**§ 44-2107. Penalty provisions.** — (1) Whoever shall violate any of the provisions of this chapter, or any laws or rules adopted pursuant to this chapter, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time, or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator, shall be guilty of a misdemeanor and shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars (\$1,000) in accordance with the following:

(a) Each day of such violation shall constitute a separate offense. A violation will be considered a second or additional offense only if it occurs within one (1) year from the first violation.

(b) The same penalties shall apply, upon conviction, to any member of a copartnership, or to any construction, managing or directing officer of any corporation, limited liability company or limited liability partnership or other such organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

(c) Proceedings related to the imposition of civil penalties shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2) In addition to any other penalties specified in this section, whenever any person violates the provisions of this chapter by acting as a retailer, or installer, without a license, the administrator may maintain an action in the name of the state of Idaho to enjoin the person from any further violations in accordance with the following:

(a) Such action may be brought either in the county in which the acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada county.

(b) Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue a temporary restraining order and/or preliminary injunction, without bond, enjoining the defendant from the commission of any such act or acts constituting the violation.

(c) A copy of the complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other similar civil actions. If the commission of the act or acts is established, the court shall enter a decree permanently enjoining the defendant from committing such act or acts. If an injunction issued under this section is violated, the court, or the judge thereof at chambers, may summarily try and punish the offender for contempt of court.

### **History.**

I.C., § 44-2106, as added by 1988, ch. 264, § 1, p. 519; am. and redesign. 1993, ch. 372, § 7, p. 1339; am. 2007, ch. 112, § 9, p. 321; am. 2013, ch. 57, § 5, p. 131; am. 2016, ch. 342, § 11, p. 968; am. 2020, ch. 129, § 6, p. 409.

## **STATUTORY NOTES**

### **Cross References.**

Contempt proceedings, § 7-601 et seq.

### **Amendments.**

The 2007 amendment, by ch. 112, rewrote the section which formerly read: “Whoever shall violate any of the provisions of this chapter, or any laws or rules adopted pursuant to this chapter, shall be guilty of a misdemeanor.”

The 2013 amendment, by ch. 57, deleted “service company” preceding “or RME” near the middle of the introductory paragraph in subsection (2).

The 2016 amendment, by ch. 342, added paragraph (1)(c).

The 2020 amendment, by ch. 128, substituted “retailer, or installer” for “retailer, resale broker, installer, or RME” near the middle of the introductory paragraph in subsection (2).

### **Compiler’s Notes.**

This section was formerly compiled as § 44-2106.

### **Effective Dates.**

Section 30 of S.L. 1988, ch. 264 provided that the act should take effect on and after January 1, 1989.

**§ 44-2108. Retailer — Additional licensure requirements.** — (1) Each business office or retail sales location shall be owned or leased by the retailer and shall comply with all local building codes, zoning, and other applicable land use regulatory ordinances, and:

(a) If the location is on leased property, the retailer must provide written confirmation of the term and existence of the lease, signed by the lessor; and

(b) An exterior sign that identifies the retailer by the name shown on the license must be prominently affixed to the location or the office building and be clearly visible and easily readable from the nearest major avenue of traffic; and

(c) The retailer must prominently display his license, or a true and correct copy of that license, in each location; and

(d) The licensee must post, in a clearly visible and readily accessible location, written information concerning regular hours of business and emergency contact information.

(2) Regardless of the number of locations at which a retailer engages in business, he must maintain a principal place of business that complies with the requirements set forth in subsection (1)(a)[(1)(b)] of this section, and at which the records of the business are maintained on a permanent basis.

(3) The retailer must promptly notify the division of building safety, in writing, of any change in ownership, business name, location of business, mailing address or telephone numbers.

(4) For each new product sold, the retailer must provide proof, satisfactory to the board, of the retailer's current authority to sell that manufacturer's products.

(5) Failure to adhere to the requirements of this section, or any other requirement pertaining to licensure as set forth in law or rule, shall constitute grounds for the imposition of discipline up to and including revocation of licensure.

**History.**

[I.C., § 44-2108](#), as added by 2007, ch. 112, § 10, p. 321; am. 2020, ch. 129, § 7, p. 409.

## **STATUTORY NOTES**

### **Amendments.**

The 2020 amendment, by ch. 128, deleted “or resale broker” following “retailer” in the section heading, throughout subsection (1) and in subsections (2) and (3).

### **Compiler’s Notes.**

The bracketed insertion in subsection (2) was added by the compiler to correct the statutory reference. See [Idaho Administrative Code 07.03.11.010.15](#).





## Chapter 22

### MANUFACTURED HOME INSTALLATION STANDARD

Sec.

44-2201. Mobile and manufactured homes installation.

44-2202. Installation permits and inspections required.

44-2203 — 44-2205. [Repealed.]

44-2206. Installation of electrical service equipment. [Repealed.]

**§ 44-2201. Mobile and manufactured homes installation.** — (1) All new manufactured homes must be installed in accordance with the manufacturer's approved installation instructions. All used mobile and manufactured homes shall be installed in accordance with the Idaho manufactured home installation standard, as provided by rule pursuant to this chapter. All mobile and manufactured homes must be installed in accordance with all other applicable state laws or rules pertaining to utility connection requirements.

(2) The administrator of the division of building safety may promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, specifying standardized installation instructions for mobile and manufactured homes. Upon the effective date of such rules, the rules shall prevail over any conflicting provisions in this chapter.

#### **History.**

**I.C., § 44-2201**, as added by 1988, ch. 264, § 2, p. 519; am. 1993, ch. 372, § 8, p. 1339; am. 1998, ch. 237, § 1, p. 794; am. 2001, ch. 96, § 2, p. 243; am. 2012, ch. 50, § 1, p. 146.

### **STATUTORY NOTES**

#### **Cross References.**

Division of building safety, § 67-2601A.

#### **Amendments.**

The 2012 amendment, by ch. 50, in subsection (1) substituted “new manufactured homes” for “mobile/manufactured homes” near the beginning of the first sentence and added “manufacturer's approved installation instructions” at the end and inserted “All used mobile and manufactured homes shall be installed in accordance with the” at the beginning of the second sentence; and substituted “mobile and manufactured homes” for “mobile/manufactured homes” in the section heading and twice in the text.

#### **Effective Dates.**

Section 30 of S.L. 1988, ch. 264 provided that the act should take effect on and after January 1, 1989.

Section 5 of S.L. 2001, ch. 96 declared an emergency. Approved March 22, 2001.

**§ 44-2202. Installation permits and inspections required.** — (1) The owner or the installer of a mobile or manufactured home must obtain an installation tag and permit as applicable before installing a mobile or manufactured home that will be used as a residence on a building site or in a park. The installer's license must be in effect at the time of the application for the installation permit.

(2) Installation tags shall be obtained from the division of building safety and are required for each installation of a new manufactured home. The fee for the installation tag shall be prescribed in administrative rules promulgated by the administrator of the division of building safety.

(3) Installation permits shall be issued by the division of building safety or a city or county that has by ordinance adopted a building code and whose installation inspection programs have been approved by the division. All installations shall be inspected by the authority having jurisdiction for compliance.

(4) Permit fees shall be prescribed in administrative rules promulgated by the administrator of the division of building safety or as established by the city or county having jurisdiction and whose installation inspection program has been approved by the division, as applicable.

(5) Immediately upon completion of the installation of a mobile or manufactured home, a licensed installer shall perform an inspection of the completed installation to ensure compliance with the applicable installation standard. Such inspection shall be recorded on an inspection record document approved by the division and a copy shall be provided to the homeowner upon completion of the inspection.

### **History.**

I.C., § 44-2202, as added by 1988, ch. 264, § 2, p. 519; am. 1993, ch. 372, § 9, p. 1339; am. 1997, ch. 228, § 2, p. 666; am. 2001, ch. 96, § 3, p. 243; am. 2012, ch. 50, § 2, p. 146; am. 2020, ch. 129, § 8, p. 409.

### **STATUTORY NOTES**

**Cross References.**

Division of building safety, § 67-2601A.

**Amendments.**

The 2012 amendment, by ch. 50, in subsection (1), twice substituted “mobile or manufactured home” for “mobile/manufactured home, substituted ”tag and permit as applicable“ for ”permit as required by city or county ordinance; rewrote subsection (2), which formerly read: “Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all mobile/manufactured homes within their respective jurisdictions and shall provide for inspection of all work in accordance with the Idaho manufactured home installation standard. Fees for installation permits and inspections shall be as established by the city or county having jurisdiction”; added subsections (3) and (4); redesignated former subsection (3) as subsection (5); and substituted “applicable installation” for “Idaho manufactured home installation” near the end of the first sentence in subsection (5).

The 2020 amendment, by ch. 128, deleted “or the responsible managing employee of the licensed installer” following “a licensed installer” near the middle of the first sentence in subsection (5).

**Effective Dates.**

Section 5 of S.L. 2001, ch. 96 declared an emergency. Approved March 22, 2001.

**§ 44-2203 — 44-2205. Manufacturer's instructions on stabilizing system may be used — Requirements for installing stabilizing systems — Requirements for permanent foundations. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

The following sections were repealed by S.L. 2001, ch. 96, § 4: 44-2203 which comprised I.C., § 44-2203, as added by 1988, ch. 264, § 2, p. 519.

44-2204 which comprised I.C., § 44-2204, as added by 1988, ch. 264, § 2, p. 519; am. 1993, ch. 372, § 10, p. 1339.

44-2205 which comprised I.C., § 44-2205, as added by 1988, ch. 264, § 2, p. 519.

**§ 44-2206. Installation of electrical service equipment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 44-2206, as added by 1995, ch. 341, § 1, p. 1128; am. 1996, ch. 322, § 44, p. 1029, was repealed by S.L. 2000, ch. 324, § 1, effective July 1, 2000.





Chapter 23  
CONSTRUCTION STANDARDS FOR ENERGY  
CONSERVATION

Sec.

44-2301 — 44-2305. [Repealed.]

44-2306. Idaho public utilities commission report. [Repealed.]

**§ 44-2301 — 44-2305. Definitions — Adoption of energy-efficient construction standards — Administration, enforcement, certification, inspections and fees — Release from liability — Review. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

The following sections were repealed by S.L. 2002, ch. 345, § 32: 44-2301 which comprised I.C., § 44-2301, as added by 1990, ch. 324, § 2, p. 884; am. 1995, ch. 292, § 1, p. 1025.

44-2302 which comprised I.C., § 44-2302, as added by 1990, ch. 324, § 2, p. 884; am. 1995, ch. 292, § 2, p. 1025.

44-2303 which comprised I.C., § 44-2303, as added by 1990, ch. 324, § 2, p. 884; am. 1995, ch. 292, § 3, p. 1025.

44-2304 which comprised I.C., § 44-2304, as added by 1990, ch. 324, § 2, p. 884; am. and redesiɡ. 1995, ch. 292, § 5, p. 1025.

44-2305 which comprised I.C., § 44-2305, as added by 1995, ch. 292, § 6, p. 1025.

**§ 44-2306. Idaho public utilities commission report. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 44-2306, as added by 1990, ch. 324, § 2, p. 884, was repealed by S.L. 1995, ch. 292, § 4, effective July 1, 1995.



## Chapter 24

### IDAHO PROFESSIONAL EMPLOYER

Sec.

44-2401. Short title.

44-2402. Purpose.

44-2403. Definitions.

44-2404. Exemptions.

44-2405. Minimum standards.

44-2406. Other law.

44-2407. Severability.

**§ 44-2401. Short title.** — This act shall be known and may be cited as the “Idaho Professional Employer Recognition Act.”

**History.**

I.C., § 44-2401, as added by 1994, ch. 129, § 1, p. 287.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1994, Chapter 129, which is compiled as §§ 44-2401 to 44-2407 and 72-1349B.

**§ 44-2402. Purpose.** — The legislature recognizes the increased popularity of professional employer services to small Idaho businesses and, therefore, deems it necessary in the interest of public health, safety and welfare to recognize such business enterprises, set forth certain definitions, and provide statutory guidelines.

**History.**

I.C., § 44-2402, as added by 1994, ch. 129, § 1, p. 287.



**§ 44-2403. Definitions.** — As used in this chapter:

(1) “Administration fee” means those charges made by the professional employer to the client over and above the cost of taxes, premiums, wages, state and federal withholdings or licensing procedures.

(2) “Assigned worker” is a person with an employment relationship with both the professional employer and the client.

(3) “Client” means a person who obtains its work force from another person through a professional employer arrangement.

(4) “Person” means an individual, an association, a company, a firm, a partnership or a corporation.

(5) “Professional employer arrangement” means an arrangement, under contract or otherwise, whereby:

(a) A professional employer assigns workers to perform services for a client;

(b) The arrangement is intended to be, or is, on-going rather than temporary in nature; and

(c) Employer responsibilities are in fact shared by the professional employer and the client for assigned workers.

(d) For the purposes of this chapter, a professional employer arrangement shall not include:

(i) Temporary employees;

(ii) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of [section 414\(b\) and \(c\) of the Internal Revenue Code of 1986](#), as amended, and which does not hold itself out as a professional employer;

(iii) Arrangements for which a person assumes full responsibility for the product or service performed by such person or his agents and

retains and exercises, both legally and in fact, a complete right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and his agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

(6) “Professional employer” means any person engaged in providing the services of employees pursuant to one (1) or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

(7) “Temporary employee” means a worker employed by an organization which hires its own employees and assigns them to a third party to support or supplement the third party’s work force in work situations such as employee absences, temporary skill shortages, seasonal workload conditions, and special assignments and projects.

#### **History.**

I.C., § 44-2403, as added by 1994, ch. 129, § 1, p. 287.

### **STATUTORY NOTES**

#### **Federal References.**

Section 414 (b) and (c) of the Internal Revenue Code, referred to in paragraph (5)(d)(ii), is compiled as 26 USCS § 414 (b) and (c).

### **CASE NOTES**

#### **Construction with Other Law.**

In determining whether an employment services provider to small businesses transacted insurance under § 41-112, the Idaho supreme court, reviewing a decision of the director of the Idaho department of insurance de novo, was not required to determine whether the provider was a professional employer under Idaho law or whether it sold insurance pursuant to paragraph (5)(d) of this section. *Empls Res. Mgmt. Co. v. Dep’t of Ins.*, 143 Idaho 179, 141 P.3d 1048 (2006), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**§ 44-2404. Exemptions.** — This chapter shall not apply to labor organizations or to any political subdivision of the state, the United States, and any programs or agencies thereof. A professional employer arrangement shall have no effect on existing collective bargaining agreements.

**History.**

I.C., § 44-2404, as added by 1994, ch. 129, § 1, p. 287.

**§ 44-2405. Minimum standards.** — (1) Each professional employer shall, as a condition to being recognized by this chapter, agree to the following standards:

(a) Have a written contract between the client and the professional employer setting forth the responsibilities and duties of each party. The contract shall disclose to the client the services to be rendered, the respective rights and obligations of the parties, and provide that the professional employer:

(i) Reserves a right of direction and control over workers assigned to the client's location. However, the client may retain such sufficient direction and control over the assigned workers as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure, regulatory or statutory requirement of the client;

(ii) Assume responsibility for the withholding and remittance of payroll-related taxes and employee benefits from its own accounts, as long as the contract between the client and professional employer remains in force;

(iii) Retain authority to hire, terminate, discipline, and reassign assigned workers. However, the client, if it accepts the responsibility for its action, may have the right to accept or cancel the arrangement of any assigned worker.

(b) Give written notice of the general nature of the relationship between the professional employer and the client to the workers assigned to the client and the public at large. Such notice may be posted in a visible and conspicuous manner at the client's work site.

(2) It is anticipated that under this chapter professional employers will, from time to time, receive from client companies, moneys which represent assigned workers' wages, withholdings, taxes, and benefit plan payments. Each professional employer shall keep in force, in the state of Idaho, a separate bank account or accounts for the purpose of keeping such money

separate from the professional employer's operating funds. Assigned workers' wages, withholdings, taxes, and benefit plan payments shall be promptly paid from such trust accounts.

(3) A professional employer shall be considered an employer for purposes of withholding state income tax pursuant to [section 63-3035, Idaho Code](#), to the same extent as the professional employer is an employer for withholding federal income taxes pursuant to the Internal Revenue Code. As long as the professional employer's contract with the client remains in force, the professional employer shall have a right to and shall perform the following responsibilities:

- (a) Pay wages and collect, report and pay employment taxes from its trust accounts;

- (b) Pay unemployment taxes as required in Idaho state unemployment laws, chapter 13, title 72, Idaho Code;

- (c) Work with the client in securing and providing worker's compensation coverage for all of its assigned workers.

(4) A recognized professional employer shall be deemed the employer for the purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers.

(5) Subject to any contrary provisions of the contract between the client and the professional employer, the professional employer arrangement that exists between a professional employer and its clients shall be interpreted for the purposes of sales tax on services, insurance and bonding as follows:

- (a) A professional employer shall not be liable for the acts, errors or omissions of a client or of any assigned worker acting under the direction and control of a client. A client shall not be liable for the acts, errors or omissions of a professional employer or of any assigned worker of a professional employer acting under the direction and control of the professional employer. Nothing herein shall limit any contractual liability between the professional employer and the client, nor shall this subsection in any way limit the liabilities of any professional employer or client as defined elsewhere in this chapter;

- (b) Workers assigned or contracted to a client by a professional employer are not deemed employees of the professional employer for purposes of

general liability insurance, automobile insurance, fidelity bonds, surety bonds, employer's liability which is not covered by worker's compensation, or liquor liability insurance carried by the professional employer unless the employees are included by specific reference in the applicable employment arrangement contract, insurance contract or bond;

(c) If Idaho enacts a tax on services similar to the sales tax, the administration fee will be the amount which is taxed.

(6) The sale of professional employer arrangements in conformance with the provisions of this chapter shall not constitute the sale of insurance within the meaning of applicable Idaho law.

**History.**

I.C., § 44-2405, as added by 1994, ch. 129, § 1, p. 287.

**§ 44-2406. Other law.** — Nothing in this chapter exempts a client of a professional employer company nor a worker assigned to a client by a professional employer from any other state, local or federal license or registration requirement. Any individual who must be licensed, registered or certified according to law and who is an assigned worker is deemed an employee of the client for purposes of the license, registration or certification. Except to the extent provided otherwise in the contract with a client, a professional employer is not liable for the general debts, obligations, loss of profits, business goodwill or other consequential special or incidental damages of a client with which it has entered into a professional employer arrangement.

**History.**

I.C., § 44-2406, as added by 1994, ch. 129, § 1, p. 287.

**§ 44-2407. Severability.** — If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

**History.**

I.C., § 44-2407, as added by 1994, ch. 129, § 1, p. 287.





## Chapter 25

### MOBILE HOME REHABILITATION

Sec.

44-2501. Legislative intent.

44-2502. Application of chapter — Rehabilitation required — Certificate of compliance.

44-2503. Rehabilitation requirements.

44-2504. Rehabilitation form and checklist — Administrative fee — Rules.

**§ 44-2501. Legislative intent.** — In order to ensure a continued supply of safe, affordable housing, the state of Idaho hereby adopts a rehabilitation program for existing mobile homes constructed prior to June 15, 1976, the effective date of the federal manufactured housing and safety standards act (HUD code), that are currently sited within Idaho or that may be brought into the state after the effective date of this act. It is legislative intent that the relocation and installation of these homes be approved when the rehabilitation on the home has been completed as required in this chapter and proof of compliance has been issued by the administrator of the division of building safety of the state of Idaho.

**History.**

I.C., § 44-2501, as added by 1998, ch. 128, § 1, p. 478.

**STATUTORY NOTES**

**Cross References.**

Division of building safety, § 67-2601A.

**Federal References.**

The federal manufactured housing construction and safety standards act, referred to in this section, is codified as [42 U.S.C.S. § 5401 et seq.](#)

**Compiler's Notes.**

The phrase “the effective date of this act” refers to the effective date of S.L. 1998, Chapter 128, which was effective July 1, 1998.

**§ 44-2502. Application of chapter — Rehabilitation required — Certificate of compliance.** — (1) This chapter shall apply to the installation of mobile homes constructed prior to June 15, 1976, within the jurisdiction of a city or county requiring an installation permit pursuant to [section 44-2202, Idaho Code](#).

(2) Before a permit for the installation of the mobile home may be issued, the home must meet the rehabilitation requirements specified in this chapter and receive a certificate of compliance from the administrator of the division of building safety of the state of Idaho.

(3) Upon submission of the rehabilitation form required pursuant to [section 44-2504, Idaho Code](#), and any other information required by the administrator to establish compliance with this chapter, the administrator shall issue a certificate of compliance to the homeowner. The certificate of compliance must be presented to the local jurisdiction before a permit for the installation of the home may be issued.

(4) Upon receipt of the certificate of compliance, the local jurisdiction shall issue the installation permit in the same manner as the permit would be issued with respect to a mobile/manufactured home for which rehabilitation is not required. No zoning or other ordinance or policy of the local jurisdiction prohibiting relocation or installation of a mobile home to which this chapter applies shall be effective to prohibit the relocation or installation of a mobile home for which a certificate of compliance has been issued in accordance with this chapter.

### **History.**

[I.C., § 44-2502](#), as added by 1998, ch. 128, § 1, p. 478.

## **STATUTORY NOTES**

### **Cross References.**

Division of building safety, § 67-2601A.

**§ 44-2503. Rehabilitation requirements.** — The mobile home shall meet the following rehabilitation requirements:

(1) A smoke detector (which may be a single station alarm device) shall be installed on any wall in a hallway or space communicating with each bedroom area and the living area on the living area side and, when located in a hallway, the detector shall be between the return air intake and the living area. Each smoke detector shall be installed in accordance with its listing and the top of the detector shall be located on a wall four (4) inches to twelve (12) inches below the ceiling. The detector may be battery-powered or may be connected to an electrical outlet box by a permanent wiring method into a general electrical branch circuit, without any switch between the over current protection device protecting the branch circuit and the detector.

(2) The walls, ceilings and doors of each compartment containing a gas-fired furnace or water heater shall be lined with five-sixteenth (5/16) inch gypsum board, unless the door opens to the exterior of the home, in which case, the door may be all metal construction. All exterior compartments shall seal to the interior of the mobile home.

(3) Each room designated expressly for sleeping purposes shall have an exterior exit door or at least one (1) outside egress window or other approved exit device with a minimum clear dimension of twenty-two (22) inches and a minimum clear opening of five (5) square feet. The bottom of the exit shall not be more than thirty-six (36) inches above the floor.

(4) All electrical systems shall be tested for continuity to assure that metallic parts are properly bonded, tested for operation to demonstrate that all equipment is connected and in working order, and given a polarity check to determine that connections are proper. The electrical system shall be properly protected for the required amperage load. If the unit wiring is of aluminum conductors, all receptacles and switches rated twenty (20) amperes or less directly connected to the aluminum conductors shall be marked CO/ALR. Exterior receptacles other than heat tape receptacles shall be of the ground fault circuit interrupter (GFI) type. Conductors of

dissimilar metals (copper/aluminum or copper clad aluminum) must be connected in accordance with section 110-14 of the national electrical code.

(5) The mobile home's gas piping shall be tested with the appliance valves removed from the piping system and piping capped at those areas. The piping system shall withstand a pressure of at least six (6) inch mercury or three (3) psi gauge for a period of not less than ten (10) minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or a slope gauge calibrated so as to read in increments of not greater than one-tenth (1/10) pound or an equivalent device. The source of normal operating pressure shall be isolated before the pressure test is made. After the appliance connections are reinstalled, the piping system and connections shall be tested with line pressure of not less than ten (10) inches nor more than fourteen (14) inches water column air pressure. The appliance connections shall be tested for leakage with soapy water or a bubble solution. All gas furnaces and water heaters shall be vented to the exterior in accordance with chapter 9 of the uniform mechanical code.

(6) A full water or air pressure test will be performed on the mobile home's water and sewer system.

(a) Water piping shall be tested and proven tight under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A fifty (50) pound per square inch (344.5kPa) air pressure may be substituted for the water test. In either method of test, the piping shall withstand a test without leaking for a period of not less than fifteen (15) minutes.

(b) A water test shall be applied to the drainage and vent system either in its entirety or in sections. If applied to the entire system, all openings in the piping shall be tightly closed, except at the highest opening, and the system filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest opening of the section under the test and each section shall be filled with water, but no section shall be tested with less than a ten (10) foot (3m) head of water. In testing successive sections, at least the upper ten (10) feet (3m) of the next preceding section shall be tested, so that no joint or pipe in the structure, except the uppermost ten (10) feet (3m) of the system, shall have been submitted to a test of less than a ten (10) foot

(3m) head of water. The water shall be kept in the system or in the portion under testing for at least fifteen (15) minutes before inspection starts. The system shall be tight at all points.

(7) All repairs or other work necessary to bring the mobile home into compliance with the requirements of this section shall be completed before a certificate of compliance may be issued.

**History.**

I.C., § 44-2503, as added by 1998, ch. 128, § 1, p. 478.

**STATUTORY NOTES**

**Compiler's Notes.**

For further information on the national electrical code, referred to at the end of subsection (4), see <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=70>.

For further information on the uniform mechanical code, referred to at the end of subsection (5), see <http://epubs.iapmo.org/2018/UMC>.

The words and abbreviations enclosed in parentheses so appeared in the law as enacted.

**§ 44-2504. Rehabilitation form and checklist — Administrative fee — Rules.** — (1) The administrator of the division of building safety shall, by rule, establish a mobile home rehabilitation form and checkoff list. The form shall be completed and signed by an authorized representative of an Idaho licensed manufactured home service company or installer or dealer holding an installer's license. Electrical, gas, water and sewer inspections and any necessary repairs must be performed by a person or company properly licensed and authorized to perform the work under Idaho law, with the person or company performing the inspections and repairs to be noted on the rehabilitation form. A properly completed rehabilitation form shall be presented to the division of building safety before a certificate of compliance may be issued.

(2) The administrator of the division of building safety may, by rule, establish an administrative fee to cover the costs of administering the provisions of this chapter.

(3) In addition to the rulemaking authority provided in this section, the administrator of the division of building safety may promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this chapter.

**History.**

I.C., § 44-2504, as added by 1998, ch. 128, § 1, p. 478.

**STATUTORY NOTES**

**Cross References.**

Division of building safety, § 67-2601A.





## Chapter 26

# VOLUNTARY CONTRIBUTIONS ACT

Sec.

44-2601. Short title.

44-2602. Definitions.

44-2603. Limits on labor organization contributions.

44-2604. Criminal acts — Penalties.

44-2605. Registration — Disclosure.

**§ 44-2601. Short title.** — This chapter shall be known as the “Voluntary Contributions Act.”

**History.**

I.C., § 44-2601, as added by 2003, ch. 97, § 1, p. 311.

**STATUTORY NOTES**

**Compiler’s Notes.**

Section 5 of S.L. 2003, ch. 97 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 44-2602. Definitions.** — (1) As used in this chapter the following terms have the following meanings:

(a) “Ballot proposition” includes initiatives, referenda, proposed constitutional amendments, and any other items submitted to the voters for their approval or rejection.

(b) “Filing entity” means a candidate, officeholder, political committee, political party, and each other entity required to report contributions under chapter 66, title 67, Idaho Code.

(c) “Fund” means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this chapter.

(d)(i) “Labor organization” means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

(ii) Except as provided in subsection (1)(d)(iii) of this section, “labor organization” includes each employee association and union for employees of public and private sector employers.

(iii) “Labor organization” does not include organizations governed by the national labor relations act, [29 U.S.C. section 151, et seq.](#) or the railway labor act, [45 U.S.C. section 151, et seq.](#)

(e) “Political activities” means electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee or political issues committee or in support of or against any ballot measure.

(f) “Union dues” means dues, fees or other moneys required as a condition of membership in a labor organization.

(2) Other terms defined in chapter 66, title 67, Idaho Code, apply to this chapter.

**History.**

**I.C., § 44-2602**, as added by 2003, ch. 97, § 1, p. 311; am. 2003, ch. 340, § 1, p. 916.

**STATUTORY NOTES****Compiler's Notes.**

Section 5 of S.L. 2003, ch. 97 read: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**RESEARCH REFERENCES**

**ALR.** — Constitutional validity of state or local regulation of contributions by or to political action committees. **24 A.L.R.6th 179.**

**§ 44-2603. Limits on labor organization contributions.** — (1)(a) A labor organization may only make expenditures for political activities if the labor organization establishes a separate segregated fund that meets the requirements of this chapter.

(b) The labor organization shall ensure that:

(i) In soliciting contributions for the fund, the solicitor discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the fund is a political fund and will be expended for political activities;

(ii) Union dues are not used for political activities, transferred to the fund, or intermingled in any way with fund moneys;

(iii) The cost of administering the fund is paid from fund contributions and not from union dues; and

(iv) Each contribution is voluntary and shall be made by the member and may not come from or be remitted by the employer of the member.

(2) At the time the labor organization is soliciting contributions for the fund from an employee, the labor organization shall:

(a) Affirmatively inform the employee, orally or in writing, of the fund's political purpose; and

(b) Affirmatively inform the employee, orally or in writing, of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

(3) The labor organization has the burden of proof to establish that the requirements of subsections (1)(b) and (2) of this section are met.

(4) Notwithstanding the requirements of subsection (1)(b)(ii) of this section, a labor organization may use union dues to lobby or communicate directly with its own members about political candidates, ballot measures, and other political issues.

**History.**

I.C., § 44-2603, as added by 2003, ch. 97, § 1, p. 311; am. 2003, ch. 340, § 2, p. 916.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 5 of S.L. 2003, ch. 97 read: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 44-2604. Criminal acts — Penalties.** — (1)(a) It is unlawful for a labor organization to make expenditures for political activities by using contributions:

- (i) Secured by physical force or threat of force, job discrimination or threat of job discrimination, membership discrimination or threat of membership discrimination, or economic reprisals or threat of economic reprisals; or
  - (ii) From union dues except as provided in [section 44-2603\(4\), Idaho Code](#).
- (b) When a labor organization is soliciting contributions for a fund from an employee, it is unlawful for a labor organization to fail to:
- (i) Affirmatively inform the employee orally or in writing of the fund's political purpose; and
  - (ii) Affirmatively inform the employee orally or in writing of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.
- (c) It is unlawful for a labor organization to pay a member for contributing to the fund by providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect compensation.
- (2) Any person or entity violating this section is guilty of a misdemeanor.

**History.**

[I.C., § 44-2604](#), as added by 2003, ch. 97, § 1, p. 311.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Compiler's Notes.**

Section 5 of S.L. 2003, ch. 97 read: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the



application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 44-2605. Registration — Disclosure.** — Each fund established by a labor organization under this chapter shall:

(1) Register as a political committee as required by chapter 66, title 67, Idaho Code; and

(2) File the financial reports for political committees required by chapter 66, title 67, Idaho Code.

**History.**

I.C., § 44-2605, as added by 2003, ch. 97, § 1, p. 311.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 5 of S.L. 2003, ch. 97 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”



Chapter 27  
AGREEMENTS AND COVENANTS PROTECTING  
LEGITIMATE BUSINESS INTERESTS

Sec.

44-2701. Agreements and covenants protecting legitimate business interests.

44-2702. Definitions.

44-2703. Construction and enforcement.

44-2704. Restriction of direct competition — Rebuttable presumptions.

**§ 44-2701. Agreements and covenants protecting legitimate business interests.** — A key employee or key independent contractor may enter into a written agreement or covenant that protects the employer's legitimate business interests and prohibits the key employee or key independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment, and the same shall be enforceable, if the agreement or covenant is reasonable as to its duration, geographical area, type of employment or line of business, and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests.

**History.**

I.C., § 44-2701, as added by 2008, ch. 295, § 1, p. 824.

**§ 44-2702. Definitions.** — For purposes of this chapter, the following terms shall have the following meanings:

(1) “Key employees” and “key independent contractors” shall include those employees or independent contractors who, by reason of the employer’s investment of time, money, trust, exposure to the public, or exposure to technologies, intellectual property, business plans, business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer and, as a result, have the ability to harm or threaten an employer’s legitimate business interests.

(2) “Legitimate business interests” shall include, but not be limited to, an employer’s goodwill, technologies, intellectual property, business plans, business processes and methods of operation, customers, customer lists, customer contacts and referral sources, vendors and vendor contacts, financial and marketing information, and trade secrets as that term is defined by chapter 8, title 48, Idaho Code.

### **History.**

I.C., § 44-2702, as added by 2008, ch. 295, § 1, p. 824; am. 2018, ch. 349, § 1, p. 823.

## **STATUTORY NOTES**

### **Amendments.**

The 2018 amendment, by ch. 349, substituted “chapter” for “section” in the introductory paragraph.

### **Compiler’s Notes.**

S.L. 2018, Chapter 349 became law without the signature of the governor.

**§ 44-2703. Construction and enforcement.** — To the extent any such agreement or covenant is found to be unreasonable in any respect, a court shall limit or modify the agreement or covenant as it shall determine necessary to reflect the intent of the parties and render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement or covenant as limited or modified.

**History.**

I.C., § 44-2703, as added by 2008, ch. 295, § 1, p. 824.

**§ 44-2704. Restriction of direct competition — Rebuttable presumptions.** — (1) Under no circumstances shall a provision of such agreement or covenant, as set forth herein, establish a postemployment restriction of direct competition that exceeds a period of eighteen (18) months from the time of the key employee's or key independent contractor's termination unless consideration, in addition to employment or continued employment, is given to a key employee or key independent contractor. Nothing in this chapter shall be construed to limit a party's ability to otherwise protect trade secrets or other information deemed proprietary or confidential.

(2) It shall be a rebuttable presumption that an agreement or covenant with a postemployment term of eighteen (18) months or less is reasonable as to duration.

(3) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to geographic area if it is restricted to the geographic areas in which the key employee or key independent contractor provided services or had a significant presence or influence.

(4) It shall be a rebuttable presumption that an agreement or covenant is reasonable as to type of employment or line of business if it is limited to the type of employment or line of business conducted by the key employee or key independent contractor, as defined in [section 44-2702, Idaho Code](#), while working for the employer.

(5) It shall be a rebuttable presumption that an employee or independent contractor who is among the highest paid five percent (5%) of the employer's employees or independent contractors is a "key employee" or a "key independent contractor." To rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interests.

### **History.**

[I.C., § 44-2704](#), as added by 2008, ch. 295, § 1, p. 824; am. 2016, ch. 281, § 1, p. 779; am. 2018, ch. 349, § 2, p. 823.



## STATUTORY NOTES

### **Amendments.**

The 2016 amendment, by ch. 281, added subsection (6).

The 2018 amendment, by ch. 349, inserted “as defined in [section 44-2702, Idaho Code](#)” in subsection (4); and deleted former subsection (6), which read: “If a court finds that a key employee or key independent contractor is in breach of an agreement or a covenant, a rebuttable presumption of irreparable harm has been established. To rebut such presumption, the key employee or key independent contractor must show that the key employee or key independent contractor has no ability to adversely affect the employer’s legitimate business interests”.

### **Compiler’s Notes.**

S.L. 2018, Chapter 349 became law without the signature of the governor.

## CASE NOTES

### **Unenforceable Covenant.**

In an action for tortious interference with a noncompete agreement, the new employer was entitled to summary judgment because the former employer’s noncompete agreement was unenforceable under Idaho law; the covenant was not restricted to clients with whom the employee had contact, prohibited “work” was not defined, and the geographic area was not restricted for purposes of this section. [AMX Int’l, Inc. v. Battelle Energy Alliance, Llc](#), 744 F. Supp. 2d 1087 (D. Idaho 2010).

**Title 45**  
**LIENS, MORTGAGES AND PLEDGES**

Chapter

- Chapter 1. Liens in General, §§ 45-101 — 45-116.
- Chapter 2. Uniform Federal Lien Registrations, §§ 45-201 — 45-210.
- Chapter 3. Liens in Crops, §§ 45-301 — 45-318.
- Chapter 4. Loggers' Liens, §§ 45-401 — 45-417.
- Chapter 5. Liens of Mechanics and Materialmen, §§ 45-501 — 45-525.
- Chapter 6. Claims for Wages, §§ 45-601 — 45-621.
- Chapter 7. Hospital and Nursing Care Liens, §§ 45-701 — 45-705.
- Chapter 8. Miscellaneous Liens, §§ 45-801 — 45-811.
- Chapter 9. Mortgages in General, §§ 45-901 — 45-916.
- Chapter 10. Mortgage of Real Property, §§ 45-1001 — 45-1004.
- Chapter 11. Aircraft Improvement Liens, §§ 45-1101 — 45-1107.
- Chapter 12. Reconveyance, §§ 45-1201 — 45-1206.
- Chapter 13. General Provisions Relating to Enforcement of Liens and Mortgages, §§ 45-1301 — 45-1303.
- Chapter 14. Pledges. [Repealed.]
- Chapter 15. Trust Deeds, §§ 45-1501 — 45-1515.
- Chapter 16. Consumer Foreclosure Protection Act, §§ 45-1601 — 45-1605.
- Chapter 17. Nonconsensual Common Law Liens. [Repealed.]
- Chapter 18. Agricultural Commodity Dealer Liens, §§ 45-1801 — 45-1810.
- Chapter 19. State Liens, §§ 45-1901 — 45-1910.



## Chapter 1

### LIENS IN GENERAL

Sec.

45-101. Liens defined.

45-102. General and special liens.

45-103. General lien defined.

45-104. Special lien defined.

45-105. Satisfaction of prior lien.

45-106. Contracts subject to this chapter.

45-107. Lien on future interest.

45-108. Lien for performance of future obligations — Validity — Priority.

45-109. Lien transfers no title.

45-110. Contracts for forfeiture void.

45-111. Personal obligation not implied.

45-112. Priority of purchase money mortgage.

45-113. Right to redeem from lien.

45-114. Rights of junior lienor.

45-115. Restoration extinguishes lien.

45-116. Effect of modification on priority of lien.

**§ 45-101. Liens defined.** — A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

**History.**

R.S., § 3325; reen. R.C. & C.L., § 3373; C.S., § 6340; I.C.A., § 44-101.

**STATUTORY NOTES**

**Cross References.**

Aircraft, damage from, lien to extent of injury, § 21-205.

Attorney's lien, § 3-205.

Bankers' liens, § 45-808.

Carey Act liens, § 42-2026 et seq.

Drainage district assessment liens, §§ 42-2935, 42-2936.

Factors' liens, § 45-807.

Forest fire protection, lien on property, § 38-112.

Judgment liens, §§ 5-513, 10-1110.

Livestock, liens for feeding and pasturing, § 45-805.

Mining claims, lien for assessments, §§ 47-1101, 47-1102.

Mining partnership property, liens on, § 53-404.

Purchaser of real property, lien of, § 45-804.

Repair of personal property, lien for, § 45-806.

Secured transaction under Uniform Commercial Code, § 28-9-101 et seq.

Seed liens, § 45-304 et seq.

Service on personal property, lien for, § 45-805.

Sheep disease control, cost of dipping sheep a lien, § 25-146.

Transfer and inheritance tax a lien on property, § 14-409.

Unclaimed property held for charges, § 55-1401 et seq.

Vendors' liens, § 45-801 et seq.

## CASE NOTES

Encumbrance.

Lien.

Transfer in trust.

**Encumbrance.**

An encumbrance may be defined as any right or interest in land to the diminution of its value, but consistent with the free transfer of the fee. *Hunt v. Bremer*, 47 Idaho 490, 276 P. 964 (1929).

**Lien.**

A lien is a charge upon property to secure payment of a debt and transfers no title to the property subject to the lien. *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 365 P.3d 1033 (2016).

**Transfer in Trust.**

Transfer in trust mentioned by this section is one which creates a trust and absolutely conveys title from grantor, and not a deed of trust which hypothecates the property for payment of the debt. *Brown v. Bryan*, 6 Idaho 1, 51 P. 995 (1896).

**Cited** *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966); *Chavez v. Barrus*, 146 Idaho 212, 192 P.3d 1036 (2008).

**§ 45-102. General and special liens.** — Liens are either general or special.

**History.**

R.S., § 3326; reen. R.C. & C.L., § 3374; C.S., § 6341; I.C.A., § 44-102.

**§ 45-103. General lien defined.** — A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

**History.**

R.S., § 3327; reen. R.C. & C.L., § 3375; C.S., § 6342; I.C.A., § 44-103.

**CASE NOTES**

**Cited** *Brown v. Bryan*, 6 Idaho 1, 51 P. 995 (1896).



**§ 45-104. Special lien defined.** — A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

**History.**

R.S., § 3328; reen. R.C. & C.L., § 3376; C.S., § 6343; I.C.A., § 44-104.

**STATUTORY NOTES**

**Cross References.**

Animals running at large in herd districts, lien for damages, § 25-2408.

Bridges and culverts across highways, costs a lien against premises of ditch owners, § 40-2322.

Federal court judgments, lien of, § 10-1110.

Insect pests and plant diseases, cost of abatement a lien, § 22-2010.

Livestock breaking into inclosure, § 25-2201.

Partition fences, lien when erected by one owner, § 35-103.

**CASE NOTES**

**Cited** *Brown v. Bryan*, 6 Idaho 1, 51 P. 995 (1896).

**§ 45-105. Satisfaction of prior lien.** — Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

**History.**

R.S., § 3329; reen. R.C. & C.L., § 3377; C.S., § 6344; I.C.A., § 44-105.

**CASE NOTES**

Prior lien.

Second deed of trust.

Usury.

**Prior Lien.**

Payments to satisfy a subsequent mortgage may not be added to the amount owing on a prior lien, as those earlier expenditures were not made on a prior lien, as required by this section. *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009).

**Second Deed of Trust.**

Since the second deed of trust held by the seller of house was functionally equivalent to a mortgage, the holders' lien was special; accordingly, this section entitled them to include payments they made to prevent foreclosure of the first deed of trust as part of the mortgage indebtedness created by their junior encumbrance. *Thompson v. Kirsch*, 106 Idaho 177, 677 P.2d 490 (Ct. App. 1984).

**Usury.**

Junior mortgagee has right to raise question of usury in respect to the first mortgage contract in the same manner as owner of the property. *United States Bldg. & Loan Ass'n v. Lanzarotti*, 47 Idaho 287, 274 P. 630 (1929).

**Cited Law** *v. Spence*, 5 Idaho 244, 48 P. 282 (1897); *Nohnberg v. Boley*, 42 Idaho 48, 246 P. 12 (1925).

**§ 45-106. Contracts subject to this chapter.** — Contracts of mortgage of real property are subject to all the provisions of this chapter.

**History.**

R.S., § 3330; reen. R.C. & C.L., § 3378; C.S., § 6345; I.C.A., § 44-106; am. 1967, ch. 272, § 9, p. 745.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 33 of S.L. 1967, ch. 272 read: “Transactions validly entered into before the effective date specified in section 32 and the rights, duties and interest flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute amended by this act as though such amendment had not occurred.”

**Effective Dates.**

Section 32 of S.L. 1967, ch. 272 read: “This act shall become effective at midnight December 31, 1967, simultaneously with the Uniform Commercial Code. It applies to transactions entered into and events occurring after that date.”

**CASE NOTES**

**Cited** *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

**§ 45-107. Lien on future interest.** — An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of said interest.

**History.**

R.S., § 3331; reen. R.C. & C.L., § 3379; C.S., § 6346; I.C.A., § 44-107.

**CASE NOTES**

**Chattel Mortgage Clause.**

After-acquired **property clauses** in chattel mortgages are invalid insofar as applied to a shifting stock of merchandise, unless the mortgage contains a proper accounting provision. **Diamond Nat'l Corp. v. Lee, 333 F.2d 517 (9th Cir. 1964).**

Failure to comply with the terms and conditions of the accounting provision of after-acquired property, as regards shifting stock, will invalidate a chattel mortgage. **Diamond Nat'l Corp. v. Lee, 333 F.2d 517 (9th Cir. 1964).**

For protection of creditors, Idaho law requires a provision with reference to sales and accounting be incorporated on a shifting stock of goods; where such provision is ignored and a substituted provision never incorporated into a chattel mortgage on the shifting stock of merchandise, the mortgage is void. **Diamond Nat'l Corp. v. Lee, 333 F.2d 517 (9th Cir. 1964).**

Where mortgagee failed to require that mortgagor comply with provision with respect to sales and accounting the mortgage did not constitute a valid lien on the shifting stock of logs and lumber, as against the trustee in bankruptcy, and this applies to the rights under a valid field warehouse arrangement. **Diamond Nat'l Corp. v. Lee, 333 F.2d 517 (9th Cir. 1964).**

Where the evidence is not in conflict that the chattel mortgagee failed to require compliance by the bankrupt with accounting provisions of the mortgage, the court is not bound by the referee's conclusion that the

mortgage was valid as to the shifting stock of merchandise. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**§ 45-108. Lien for performance of future obligations — Validity — Priority.** — A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence, which lien, if not invalid on other grounds, shall be valid as against all persons.

The validity of such contracts and liens as security for any obligation is not affected as against any person by the fact that the contract does not specify, describe or limit the obligations to be secured as to purpose, nature, time, or amount of the obligations to be secured.

All such liens, if otherwise valid, are valid against and prior and superior to all rights, liens and claims acquired by other persons in the property subject thereto after the contract creating such liens was made, except in cases where the person in whose favor the obligation secured by such lien was created, had actual notice of the existence of such subsequent right, lien or claim at the time such obligation was created, and are prior and superior to such subsequent rights, liens or claims irrespective of such or any notice in the following cases:

1. Where the person, in whose favor the obligation secured thereby was created, was legally bound to make the advance or give the consideration resulting in such obligation.

2. Where the consideration for such obligation was necessarily and actually applied to the maintenance and/or preservation of the property subject to the lien.

Making the advance or giving the consideration to result in an obligation not in existence at the time such a contract creating a lien to secure the same is made, is optional with the person making the advance or giving the consideration unless he is bound by an express contract to the contrary which shall not be implied from the fact that the contract to secure such obligation was made.

Obligations otherwise within the limits and description of those specified in any contract creating a lien to secure the performance of obligations not then in existence, but created in favor of any person to whom the original party to be secured by the lien created by such contract has transferred such

contract, shall also be secured thereby in like manner as similar obligations between the original parties thereto.

Contracts of mortgage of real property are subject to all the provisions of this section as amended.

### **History.**

R.S., § 3332; reen. R.C. & C.L., § 3380; C. S., § 6347; am. 1929, ch. 255, § 1, p. 520; I.C.A., § 44-108; am. 1955, ch. 145, § 1, p. 286; am. 1967, ch. 272, § 10, p. 745.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 1955, ch. 145 declared an emergency. Approved March 12, 1955.

## **CASE NOTES**

### **Evidence.**

### **Priority.**

### **Evidence.**

By reason of this section, parol evidence was admissible to prove that purported deeds were intended to be mortgages. *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

### **Priority.**

The general rule in the United States is that if a future advance is obligatory, it takes its priority from the original date of the mortgage, and the subsequent creditor is junior to it; however, if the advance is optional, and if the mortgagee has notice when the advance is made that a subsequent creditor has acquired an interest in the land, then the advance loses its priority to that creditor. *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

Deeds of trust are not liens: thus, the lien priority rule in this section does not extend to deeds of trust. *Liberty Bankers Life Ins. Co. v. Witherspoon*,

Kelley, Davenport & Toole, P.S., 159 Idaho 679, 365 P.3d 1033 (2016).

**Cited** State v. O'Bryan, 96 Idaho 548, 531 P.2d 1193 (1975).



**§ 45-109. Lien transfers no title.** — Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

**History.**

R.S., § 3333; reen. R.C. & C.L., § 3381; C. S., § 6348; I.C.A., § 44-109.

**STATUTORY NOTES**

**Cross References.**

Partition, lienholders may be brought into actions for, §§ 6-509 to 6-515.

**CASE NOTES**

[Lien on increase.](#)

[Lien on joint property.](#)

[Possession of mortgaged property.](#)

**[Lien on Increase.](#)**

Provision in a contract for the lease of sheep whereby a lien is given on all increase to secure payment of rental therefor conveys no title to such increase. [Solomon v. Franklin, 7 Idaho 316, 62 P. 1030 \(1900\).](#)

**[Lien on Joint Property.](#)**

Where no severance of jointly owned stock certificates occurred before pledgor's death, pledgee bank took as security the interest of but one of two joint tenants, and this interest extinguished when the pledgor failed to survive the other joint owner. [Ogilvie v. Idaho Bank & Trust Co., 99 Idaho 361, 582 P.2d 215 \(1978\).](#)

**[Possession of Mortgaged Property.](#)**

Mortgage may provide that mortgagee may take possession of mortgaged property. [Larsen v. Roberts, 32 Idaho 587, 187 P. 941 \(1919\).](#)

**Cited** Brown v. Bryan, 6 Idaho 1, 51 P. 995 (1896); Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

**§ 45-110. Contracts for forfeiture void.** — All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

**History.**

R.S., § 3334; reen. R.C. & C.L., § 3382; C.S., § 6349; I.C.A., § 44-110.

**CASE NOTES**

Lease of sheep.

Quieting of title by vendor of realty.

Quieting title in mortgagee.

**Lease of Sheep.**

Provision in contract for lease of sheep declaring forfeiture of all interests of lessee in the sheep, wool, product, and increase thereof, in case of default in payment of rental thereof, is void. *Solomon v. Franklin*, 7 Idaho 316, 62 P. 1030 (1900).

**Quieting of Title by Vendor of Realty.**

Provisions for forfeiture in contract for failure to make payments in time and manner specified may be enforced by action to quiet title after due declaration of forfeiture. *Clinton v. Meyer*, 43 Idaho 796, 255 P. 316 (1927).

**Quieting Title in Mortgagee.**

It was error for the trial court, upon finding that purported deeds were in fact mortgages, to decree that, upon failure of the grantor to pay the sum adjudged to be owing within a specified time, title to the land should be quieted in the grantee. *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

**Cited** *Brown v. Bryan*, 6 Idaho 1, 51 P. 995 (1896).

**§ 45-111. Personal obligation not implied.** — The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

**History.**

R.S., § 3335; reen. R.C. & C.L., § 3383; C.S., § 6350; I.C.A., § 44-111.

**§ 45-112. Priority of purchase money mortgage.** — A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

**History.**

R.S., § 3336; reen. R.C. & C.L., § 3384; C. S., § 6351; I.C.A., § 44-112.

**CASE NOTES**

Assumption of mortgage indebtedness.

Mortgage priority agreements.

Mortgage to procure money for purchase price.

Purchase money mortgages.

Mortgage priority.

**Assumption of Mortgage Indebtedness.**

Where purchasers bought the subject property and assumed and agreed to pay as a part of the purchase price the indebtedness payable to the original mortgagors, the mortgage given to secure such indebtedness as to such purchasers became a purchase money mortgage. *Hagen v. Butler*, 83 Idaho 427, 363 P.2d 712 (1961).

**Mortgage Priority Agreements.**

Irrespective of what may have been the status of the mortgages had the parties not agreed regarding the order of priorities, it is clear that by such agreement any rights the appellants might otherwise have had were waived. Parties affected thereby may agree to the order of priority between two or more mortgages. *Hagen v. Butler*, 83 Idaho 427, 363 P.2d 712 (1961).

**Mortgage to Procure Money for Purchase Price.**

Mortgage on preempted public land made to procure money to make final payment for the land is a purchase money mortgage within the meaning of this section, and has priority over subsequently accruing marital rights of

mortgagor's wife in the land, although she did not join in the mortgage. *Kneen v. Halin*, 6 Idaho 621, 59 P. 14 (1899).

### **Purchase Money Mortgages.**

Both parties had purchase money mortgages where each party received a mortgage for a portion of the price of the property and received the mortgage at the time of conveyance, and the deed and both mortgages were part of one continuous transaction involving the purchase of the property. *Estate of Skvorak v. Sec. Union Title Ins. Co.*, 140 Idaho 16, 89 P.3d 856 (2004).

A purchase money mortgage must be a part of one continuous transaction involving the purchase of land; however, the execution of the mortgage and the transfer of the deed need not be strictly contemporaneous. When a deed and mortgage are executed as part of the same transaction, the mortgage is not granted to the mortgagee after the mortgagor has obtained title; rather, the mortgagor takes title already encumbered by the mortgage. *Insight LLC v. Gunter*, 154 Idaho 779, 302 P.3d 1052 (2013).

The taking of additional security on a mortgage, beyond the land being purchased, does not destroy the purchase money status of a mortgage. *Insight LLC v. Gunter*, 154 Idaho 779, 302 P.3d 1052 (2013).

### **Mortgage Priority.**

According to Idaho's recording statutes, a mortgage recorded first in time had priority against all other subsequent mortgagees, and where the title company executed and recorded its mortgage first (twelve days before the landowners) and the owners were not good faith purchasers because they knew of the company's mortgage, such that because the owners did not record first and had at least constructive notice of the company's mortgage, the company's mortgage took priority. *Estate of Skvorak v. Sec. Union Title Ins. Co.*, 140 Idaho 16, 89 P.3d 856 (2004).

**§ 45-113. Right to redeem from lien.** — Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

**History.**

R.S., § 3337; reen. R.C. & C.L., § 3385; C.S., § 6352; I.C.A., § 44-113.

**CASE NOTES**

**Construction.**

This statute makes the right of redemption absolute, provided the redemption is sought after debt becomes due and before period of redemption on foreclosure expires. *Hannah v. Vensel*, 19 Idaho 796, 116 P. 115 (1911).

It was error for the trial court, upon finding that purported deeds were in fact mortgages, to foreclose the debtor's right of redemption by decreeing that, upon failure of the grantee to pay the sum adjudged to be owing within a specified time, title to the land should be quieted in the grantee. *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

**§ 45-114. Rights of junior lienor.** — One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and, 2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

**History.**

R.S., § 3338; reen. R.C. & C.L., § 3386; C.S., § 6353; I.C.A., § 44-114.

**CASE NOTES**

**Applicability.**

**Usury.**

**Applicability.**

This section does not apply to tax redemptions, because a tax deed is a conveyance and not a lien. *Valiant Idaho, LLC v. JV LLC*, 164 Idaho 280, 429 P.3d 168 (2018).

**Usury.**

Junior mortgagee has right to raise question of usury in respect to first mortgage contract in same manner as owner of property. *United States Bldg. & Loan Ass'n v. Lanzarotti*, 47 Idaho 287, 274 P. 630 (1929).



**§ 45-115. Restoration extinguishes lien.** — The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith and for a good consideration.

**History.**

R.S., § 3339; reen. R.C. & C.L., § 3387; C.S., § 6354; I.C.A., § 44-115.

**§ 45-116. Effect of modification on priority of lien.** — (1) The lien of a mortgage and its priority shall not be affected by provisions in the mortgage instrument or in the note or other agreement evidencing the obligation that the mortgage secures, or by the exercise of such provisions by the mortgagee:

(a) which provide for the renegotiation or adjustment of the interest rate at designated intervals, the effect of which may be to increase or decrease the number of periodic payments to be made, or extend or shorten the terms of payment, or both; or

(b) which results in an increase in the underlying mortgage obligation during a portion of the designated term of the mortgage because of deferment of all or a portion of interest payments and the addition of such payments to the outstanding principal balance of the mortgage.

The mortgagee may issue new notes at designated intervals during the term of the mortgage to reflect the modifications described herein.

(2) The provisions of subsection (1) of this section shall apply where the terms of the obligation provide that the interest rate, payment terms, or balance due on the loan may be indexed, adjusted, renewed or renegotiated and the mortgage instrument received for recordation discloses that fact.

(3) As used in this section, the term “mortgage” includes deed of trust.

**History.**

I.C., § 45-116, as added by 1982, ch. 245, § 1, p. 632.



## Chapter 2

# UNIFORM FEDERAL LIEN REGISTRATIONS

Sec.

45-201. Scope.

45-202. Place of filing.

45-203. Execution of notices and certificates.

45-204. Duties of filing officer.

45-205. Fees.

45-206. Uniformity of application and construction.

45-207. Short title.

45-208 — 45-210. [Repealed.]

**§ 45-201. Scope.** — This chapter applies only to federal tax liens and to other federal liens notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

**History.**

**I.C., § 45-201**, as added by 1979, ch. 226, § 2, p. 621.

**STATUTORY NOTES**

**Prior Laws.**

Former chapter 45, which comprised S.L. 1925, ch. 25, §§ 1 to 5, p. 37; S.L. 1929, ch. 39, §§ 1 to 5, p. 49; I.C.A. §§ 44-201 to 44-210, was repealed by S.L. 1967, ch. 262, § 8.

Former §§ 45-201 to 45-207, which comprised S.L. 1967, ch. 262, §§ 1 to 7, p. 733, were repealed by S.L. 1979, ch. 226, § 1 and the present sections substituted therefor.

**RESEARCH REFERENCES**

**ALR.** — Sufficiency of designation of taxpayer in recorded notice of federal tax lien. **3 A.L.R.3d 633**.

**COMMISSIONER'S COMMENT**

This Act is a successor to the Revised Federal Tax Lien Registrations Act as revised by the Conference in 1966. The changes made in the previous Act are brought about by the provisions of the Pension Reform Act which prescribes the method of perfecting the employer liability lien to the same as for federal tax liens.

Therefore, the Act has been changed and now applies to the employer liability lien established by Section 4068(a) of the Pension Reform Act as well as a federal tax lien. Other similar liens that may be perfected like a federal tax lien, such as the provisions for collection of federal fines

contained in proposed revisions to the federal criminal laws, are within the scope of this Act.

**§ 45-202. Place of filing.** — (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the county recorder of the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed or recorded as follows:

- (1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;
- (2) If the person against whose interest the lien applies is a trust that is not covered by paragraph (1) of this subsection, in the office of the secretary of state;
- (3) If the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;
- (4) In all other cases, in the office of the county recorder of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

**History.**

I.C., § 45-202, as added by 1979, ch. 226, § 2, p. 621; am. 1992, ch. 156, § 1, p. 509.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 45-202 was repealed. See Prior Laws, § 45-201.

## COMMISSIONER'S COMMENT

1. In order to accommodate to commercial convenience so far as possible within the limitations of [Section 6323 of the Internal Revenue Code](#), filing with the secretary of state is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in [Section 7701 of the Internal Revenue Code of 1954](#) and the implementing regulations) thus including within “partnerships” such entities as joint ventures and within “corporations” such entities as joint stock corporations and business trusts.

Because most purchases and secured transactions involving personal property of natural persons relate to consumer goods or farm personal property, searches for liens against those persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the secretary of state and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the Uniform Commercial Code.

[Section 6323 of the Internal Revenue Code](#) “locates” all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the “residence” of a taxpayer. See [IRC § 6323\(f\) \(2\)](#). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

2. The coverage of this Act now extends beyond federal tax liens as described in the Comment to Section 1.

3. In some jurisdictions, a question may be raised concerning the propriety of incorporating federal law by reference. In others, the place of filing described in this Act may not correspond to the place of filing under the Uniform Commercial Code. Alteration of this Act in these respects may create the peril that the notices will be filed in the federal district court, thus eliminating the benefits of this Act.



4. An amendment to the Uniform Federal Lien Registration Act promulgated by the Uniform Law Commissioners in 1982. Two new subparagraphs (2) and (3) were inserted under Section 2(c). The new paragraphs locate the appropriate filing offices for notice of federal liens against personal property held in trusts or estates. The amendment does not change the Act substantively. It had been assumed that federal liens could be filed against personal property held in trusts or estates at least under Section 2(c)(4) (Section 2(c)(2) prior to the 1982 amendment). However, Section 2(c)(4) does not designate a specific office in which notice of federal liens should be filed. New Section 2(c)(2) and (3) explicitly provide for filing in the office of the Secretary of State. The amendment was suggested by the Internal Revenue Service.

**§ 45-203. Execution of notices and certificates.** — Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

**History.**

I.C., § 45-203, as added by 1979, ch. 226, § 2, p. 621.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-203 was repealed. See Prior Laws, § 45-201.

**COMMISSIONER'S COMMENT**

This section addresses only the validity of the filing and not the validity of the lien.

**§ 45-204. Duties of filing officer.** — (a) If a notice of federal lien, certificate or other notice affecting a federal lien is presented to the secretary of state, he shall file it in the same manner as if it were an equivalent document filed under part 4 [part 5], chapter 9, title 28, Idaho Code.

(b) For purposes of the foregoing subsection (a), the following equivalencies between notices filed under this chapter and documents filed under part 4 [part 5], chapter 9, title 28, Idaho Code, shall apply: (1) Notice of federal lien: financing statement; (2) Refiling of notice of federal lien: continuation statement; (3) Certificate of discharge or subordination: release; and (4) Certificate of release or nonattachment: termination statement.

(c) If a notice of federal lien, certificate or other notice affecting a federal lien is presented to the county recorder, he shall record it in the general lien records.

(d) Upon the request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this chapter for which the refiling period established by federal law has not passed without a refiling of notice, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien. If the filing officer is the secretary of state, the fees for such certificate and copies shall be fixed by administrative rule. If the filing officer is the county recorder, the fees shall be as set forth in [section 31-3205, Idaho Code](#).

(e) The secretary of state may by administrative rule provide for publication of a list of those notices of federal lien filed in his office which the filing federal agency has identified as relating to agricultural crops.

### **History.**

[I.C., § 45-204](#), as added by 1992, ch. 156, § 3, p. 509.

## STATUTORY NOTES

### Cross References.

Secretary of state, § 67-901 et seq.

### Prior Laws.

Former § 45-204, which comprised **I.C., § 45-204**, as added by 1983, ch. 40, § 2, p. 98, was repealed by S.L. 1992, ch. 156, § 2.

Another former § 45-204 which comprised 1967, ch. 262, § 4, p. 733 was repealed by S.L. 1979, ch. 226, § 2, p. 733 and replaced by **I.C., § 45-204**, as added by 1979, ch. 226, § 2, p. 621 which was in turn repealed by S.L. 1983, ch. 40, § 1.

### Compiler's Notes.

The bracketed insertions in subsection (a) and in the introductory paragraph in subsection (b) were added by the compiler to reflect the 2001 revision of chapter 9, title 28, Idaho Code.

## COMMISSIONER'S COMMENT

1. It is the practice of the Internal Revenue Service to regard a "certificate of discharge" as primarily referable to specific pieces of property, so a certificate of discharge corresponds to a release under Section 9-406 [now repealed] of the Uniform Commercial Code. A "certificate of release" in tax practice is equivalent to a "termination statement" in Section 9-404 [now Section 9-513] of the Uniform Commercial Code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

2. It is expected that the Pension Benefit Guaranty Corporation will adopt the same practices as the Internal Revenue Service or other practices as the circumstances may require.

**§ 45-205. Fees.** — (a) If the filing officer is the secretary of state, the fee for filing each notice of lien or certificate or notice affecting the lien is six dollars (\$6.00), except that there shall be no fee for a certificate of release or nonattachment.

(b) If the filing officer is the county recorder, the fee for recording each notice of lien or certificate or notice affecting the lien is the standard recording fee in [section 31-3205, Idaho Code](#).

(c) The filing officer may bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

### **History.**

[I.C., § 45-205](#), as added by 1992, ch. 156, § 4, p. 509.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 45-205 was repealed. See Prior Laws, § 45-201.

Another former § 45-205, which comprised [I.C., § 45-205](#), as added by 1979, ch. 226, § 2, p. 621, was repealed by S.L. 1992, ch. 156, § 2.

## **COMMISSIONER'S COMMENT**

1. It is understood that the Treasury accepts the obligation to pay nondiscriminatory filing fees for filing notice of tax liens but desires those payments to be on a monthly billing basis. For notice of tax lien on real property, the filing fee for a real estate mortgage may serve as a standard; for a filing fee on notice of tax lien on personal property the filing fee for filing a financing statement may serve as a standard. There is now no established practice concerning fees for other notices. The certificate of discharge is comparable to a satisfaction of a real estate mortgage and to release of collateral under Section 9-406 [now repealed] of the Uniform Commercial Code. Those instruments are usually filed by persons other than the Treasury, and a filing fee for filing them should be prescribed.

A different problem is presented by certificates of release or nonattachment. Sometimes those certificates serve the purpose of permitting the public filing official to clear his records, and for that purpose the filing fee perhaps should be low in order to induce filing. Sometimes those notices are filed for purposes of the taxpayer. Given the volume of notices of tax liens which are filed daily in large filing offices, it may serve the public interest to have filed certificates of release. From the standpoint of the Treasury, those certificates serve no important purpose, and the Treasury may not file them if the fee is large. In adoption of this Act, consideration should be given by the states to providing a substantially smaller fee for filing a certificate of release, so that when a tax case is closed the Treasury will file those releases in a routine manner in order to reduce the storage and administrative problem of the local and state filing officers.

2. It is understood that the Pension Benefit Guaranty Corporation will accept the same obligations as those imposed on the Treasury for federal tax liens.

**§ 45-206. Uniformity of application and construction.** — This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**History.**

I.C., § 45-206, as added by 1979, ch. 226, § 2, p. 621.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-206 was repealed. See Prior Laws, § 45-201.

**§ 45-207. Short title.** — This chapter may be cited as the “Uniform Federal Lien Registration Law.”

**History.**

I.C., § 45-207, as added by 1979, ch. 226, § 2, p. 621.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-207 was repealed. See Prior Laws, § 45-201.



**§ 45-208 — 45-210. Entry of certificate of discharge — Fees of county recorder — Purpose of act. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1925, ch. 25, §§ 3 to 5, p. 37; I.C.A., §§ 44-208 to 44-210; am. 1951, ch. 251, § 9, p. 540; am. 1959, ch. 72, § 9, p. 157, were repealed by S.L. 1967, ch. 262, § 8.



## Chapter 3

### LIENS IN CROPS

Sec.

45-301. Purpose and scope.

45-302. Definitions.

45-303. Farm laborer's lien.

45-304. Seed lien.

45-305, 45-306. [Repealed.]

45-307. Attachment of lien.

45-308. Notice of claim of lien.

45-308A. Amendment or assignment of notice.

45-309. Civil penalty for false claim.

45-310. Duration of lien.

45-311. Duty to release upon satisfaction.

45-312. List of liens in farm crops.

45-313. Lien search.

45-314. When buyer takes free of lien.

45-315. Duty of buyer.

45-316. Administrative rulemaking.

45-317. Effective date and transition.

45-318. Applicability of uniform commercial code.

**§ 45-301. Purpose and scope.** — (1) The purpose of this chapter is to provide a unified system for creation of liens and to provide notice of claims of liens in farm crops.

(2) The scope of this chapter is limited to liens in the crops of producers, and such liens are limited in amount to the value of the seeds or labor used in the production of the crops, plus expenses incurred in obtaining recovery pursuant to this chapter.

**History.**

I.C., § 45-301, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Prior Laws.**

The following former sections were repealed by S.L. 1989, ch. 359, § 1: 45-301. (1893, p. 49, ch. 3, § 1; am. 1895, p. 137, § 1; reen. 1899, p. 147, ch. 3, § 1; am. 1903, p. 93, § 1; reen. R.C. & C.L., § 5141; C.S., § 7372; I.C.A., § 44-301; am. 1967, ch. 272, § 11, p. 745).

45-302. (1893, p. 49, ch. 3, § 3; reen. 1899, p. 147, ch. 3, § 2; reen. R.C., § 5142; am. 1915, ch. 79, p. 192; reen. C.L., § 5142; C.S., § 7373; am. 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., § 44-302).

45-303. (C.S., § 7373a, as added by 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., § 44-303).

45-304. (C.S., § 7373b, as added by 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., § 44-304).

**Compiler's Notes.**

Section 3 of S.L. 1989, ch. 359 read: "This act shall not take effect unless and until a sufficient appropriation to support its implementation is passed for the fiscal year 1990." An appropriation was made from the general appropriation to the secretary of state in order to implement this act and, therefore, it has gone into effect.

## CASE NOTES

### Decisions Under Prior Law Exclusivity of Remedies.

Former section provided a lien on the crop as security for the payment of any judgment awarded; the wage claim statute, § 45-615, on the other hand, provides for the measure of damages to be awarded. Neither the language nor the titles of the separate acts suggested that the remedies under the acts were mutually exclusive; the two statutes were intended to fulfill different purposes. *Sage v. Richtron, Inc.*, 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

**§ 45-302. Definitions.** — For the purposes of this chapter:

(1) “Buyer” means a person who purchases, on his own behalf or as an agent for others, a crop from a producer.

(2) “Claimant” means a provider of seed or farm labor who files a notice of claim of lien in a crop.

(3) “Crop year” means the calendar year in which a crop would normally be harvested.

(4) “Crops” means products of the soil. As it relates to liens for seed, the term “crops” shall be limited to annual crops. As it relates to liens for farm labor, it shall include annual crops as well as fruits, berries, grapes and nursery products.

(5) “Person” means an individual, partnership, corporation, or association.

(6) “Producer” means a farm operator to whom a claimant has provided seed or farm labor.

(7) “Written notice” means information communicated to a person in writing by an authorized person or entity and may include electronic, facsimile, computer or equivalent media.

**History.**

I.C., § 45-302, as added by 1989, ch. 359, § 2, p. 900; am. 1996, ch. 262, § 1, p. 862.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-302 was repealed. See Prior Laws, § 45-301.

**§ 45-303. Farm laborer's lien.** — (1) Any person who performs farm labor on a farm in furtherance of production of a crop shall have a lien in the crop for the agreed or reasonable value of the labor.

(2) The farm laborer's lien shall have priority over any security interest in the same crop.

(3) A landlord's interest in a crop produced on premises which are leased in consideration of a share of the crop is not subject to a farm laborer's lien.

**History.**

I.C., § 45-303, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-303 was repealed. See Prior Laws, § 45-301.

**CASE NOTES**

Decisions Under Prior Law

Construction.

Enforcement against various crops.

Estoppel of landlord.

Laborers employed by vendees.

Lienable and nonlienable items.

Nature of work.

**Construction.**

Generally, farm labor liens are purely statutory, and anyone claiming such a lien must substantially comply with the statute. *Nohnberg v. Boley*, 42 Idaho 48, 246 P. 12 (1925); *Sage v. Richtron, Inc.*, 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

### **Enforcement Against Various Crops.**

Where right of farm laborer's lien arose by virtue of work on several different crops in season's farm operations, the laborer could have demanded that such lien be enforced against the whole or any part of such crop or crops. *Roberts v. Bean*, 50 Idaho 680, 299 P. 1081 (1931).

### **Estoppel of Landlord.**

Where landlord agreed to pay lienable labor before labor was performed, he may be estopped to claim his portion of crop to extent of such labor liens. *Farm Credit Corp. v. Rigby Nat'l Bank*, 49 Idaho 444, 290 P. 211 (1930).

### **Laborers Employed by Vendees.**

Where sales contract stipulated that vendees should cultivate and care for orchard in good and husbandlike manner, and vendors retook possession and retained crops on account of vendees' default in payments, vendors' consent to employment of laborers by vendees was implied. *Burlile v. Leith*, 47 Idaho 537, 277 P. 428 (1929).

Where vendors of orchard regained title by forfeiture of sales contract and did not show any inclination to have laborers employed by vendees cease work or that they would not accept crops which laborers continued to assist in producing, laborers are entitled to lien. *Burlile v. Leith*, 47 Idaho 537, 277 P. 428 (1929).

### **Lienable and Nonlienable Items.**

Where farm laborer performed services for which he was to be compensated under an entire contract embracing both lienable and nonlienable items, he was entitled to lien for value of lienable items only when their value could be distinguished from the value of nonlienable items. *Wheatcroft v. Griffith*, 42 Idaho 231, 245 P. 71 (1926).

### **Nature of Work.**

One who performed labor in producing agricultural crop was entitled to a lien, no matter what the work, labor, or service may have been, so long as it was shown that such work was for a useful purpose, that charges were reasonable and that he had not been paid, and such lien took precedence



over all other liens of whatever nature or description. *Chapman v. A.H. Averill Mach. Co.*, 28 Idaho 121, 152 P. 573 (1915).

One who employed his teams and machinery in harvesting and threshing crop was entitled to a lien for the reasonable compensation for their use, as well as for his own labor. *Chapman v. A.H. Averill Mach. Co.*, 28 Idaho 121, 152 P. 573 (1915).

**§ 45-304. Seed lien.** — (1) Any person who furnishes seed to a producer to be sown or planted on lands owned, rented or otherwise lawfully occupied by the producer, shall have a lien in the crop or crops produced from the seed for the purchase price of the seed.

(2) The seed lien shall have priority over any security interest in the same crop, but shall be subordinate to a farm laborer's lien in the same crop.

(3) A landlord's interest in a crop produced on premises which are leased in consideration of a share of the crop is not subject to a seed lien.

**History.**

I.C., § 45-304, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-304 was repealed. See Prior Laws, § 45-301.

**CASE NOTES**

**Pre-and Post-Petition Liens.**

Where seed potatoes were shipped in separate loads, both before and after a bankruptcy hearing, under state law priority a creditor could use a dismissed bankruptcy proceeding to jump ahead of another creditor who provided seed potatoes to the debtor and who held liens on both pre-and post-petition shipments. *Tri River Chem. Co. v. TNT Farms*, 226 Bankr. 436 (Bankr. D. Idaho 1998).

**§ 45-305, 45-306. Enforcement against property — Joinder of actions — Filing fees as costs — Attorney's fees. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised C.S., §§ 7373c, 7373d as added by 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., §§ 44-305, 44-306, were repealed by S.L. 1989, ch. 359, § 1.

**§ 45-307. Attachment of lien.** — (1) A lien in a crop attaches when a claimant files a notice of claim of lien with the secretary of state.

(2) A lien attaches to the crop subject to the lien, to any right or claim arising from any loss or damage to the crop, and to any payment to the producer for the crop from any purchaser thereof.

**History.**

**I.C., § 45-307**, as added by 1989, ch. 359, § 2, p. 900; am. 1991, ch. 217, § 1, p. 521.

## STATUTORY NOTES

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 45-307, which comprised C.S., § 7373e, as added by 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., § 44-307), was repealed by S.L. 1989, ch. 359, § 1.

**Compiler's Notes.**

Section 3 of S.L. 1989, ch. 359 read: "This act shall not take effect unless and until a sufficient appropriation to support its implementation is passed for the fiscal year 1990." An appropriation was made from the general appropriation to the secretary of state in order to implement this act and, therefore, it has gone into effect.

## CASE NOTES

### Decisions Under Prior Law Necessity of Filing.

Where no claim of lien was filed, no lien attached and property could not be held against purchaser at execution sale. **Nohnberg v. Boley**, 42 Idaho 48, 246 P. 12 (1925); **Vollmer Clearwater Co. v. Union Whse. & Supply**

Co., 43 Idaho 37, 248 P. 865 (1926); Price v. Bray, 48 Idaho 268, 281 P. 470 (1929).

**§ 45-308. Notice of claim of lien.** — (1) A claimant must file with the secretary of state a notice of claim of lien between thirty (30) days before and one hundred twenty (120) days after completion of his labor for or providing seed to the producer. If a notice of claim of lien is filed before completion of the labor or delivery of the seed, there must exist a written or verbal contract for such labor or seed.

(2) The notice of claim of lien must include:

(a) The nature of the lien (farm laborer's or seed); (b) The name and address of the producer;

(c) The name and address of the claimant;

(d) The county or counties where the crop or crops covered by the lien are grown; (e) The type(s) of crop (name of commodity) to which the lien applies; (f) The crop year of the crop(s) to which the lien applies; (g) Such other information as the secretary of state shall by administrative rule require; and (h) The amount of claim exclusive of interest.

(3) The notice of claim of lien shall be signed by the claimant, his agent, or his attorney-in-fact, and the signer shall certify to the truth of the claim. Notarization is not required.

(4) The notice of claim of lien shall be filed on a standard form prescribed by the secretary of state. The form must satisfy the requirements of a farm products financing statement under [section 28-9-502\(e\), Idaho Code](#), except that: (a) The debtor may be identified as the producer;

(b) The secured party may be identified as the claimant; (c) The debtor's social security number, taxpayer identification number or other number unique to the debtor need not be included; and (d) The debtor's signature need not be included.

(5) A claimant shall give written notice of the claim to the producer.

### **History.**

[I.C., § 45-308](#), as added by 1989, ch. 359, § 2, p. 900; am. 1996, ch. 262, § 2, p. 862; am. 2000, ch. 338, § 1, p. 1131; am. 2016, ch. 202, § 1, p. 572.

## STATUTORY NOTES

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 45-308, which comprised C.S., § 7373f, as added by 1923, ch. 33, § 1, p. 36; am. 1927, ch. 182, § 1, p. 245; I.C.A., § 44-308, was repealed by S.L. 1989, ch. 359, § 1.

### **Amendments.**

The 2016 amendment, by ch. 202, in subsection (4), added the second sentence in the introductory paragraph and added paragraphs (a) through (d).

### **Compiler's Notes.**

The letter “s” and the words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 2016, ch. 202 declared an emergency. Approved March 24, 2016.

## CASE NOTES

### Decisions Under Prior Law

[Amendment of notice.](#)

[Liberal construction.](#)

[Necessity of filing.](#)

[Notice of lien.](#)

[Notice to vendee.](#)

[Sufficiency of description.](#)

[Sufficiency of notice and claim of lien.](#)

**[Amendment of Notice.](#)**

Refusal to allow amendment of notice after time for filing had expired was proper, particularly where proposed amendment would not have cured the defect. [Linch v. Perrine](#), 51 Idaho 152, 4 P.2d 353 (1931).

### **Liberal Construction.**

Former similar section was to be liberally construed in favor of the claimant, and this included the determination of whether the notice and claim of lien sufficiently described the property upon which the lien was sought and its location. [Kerby v. Robinson](#), 58 Idaho 781, 80 P.2d 33 (1938).

Where contract of employment fixed wages and total hours of work, and a certain number of hours were devoted to nonlienable work, the percentage of wages devoted to lienable labor was a mathematical calculation and should not have been fixed by evidence of the real value of either lienable or nonlienable labor. [Roberts v. Bean](#), 50 Idaho 680, 299 P. 1081 (1931).

Former similar section was to be liberally construed in favor of the farm laborer and this liberal construction included the determination of whether the notice and claim of lien sufficiently described the property upon which the lien was sought and its location. [Sage v. Richtron, Inc.](#), 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

### **Necessity of Filing.**

It is indispensable prerequisite of enforcement of such liens that claim of lien should be filed within time prescribed by statute. [Nohnberg v. Boley](#), 42 Idaho 48, 246 P. 12 (1925).

Sums paid laborers for harvesting crops could not be deducted from damages arising from conversion of crop where claims of liens for such services had not been filed, even though period for filing such claims had not expired. [Vollmer Clearwater Co. v. Union Whse. & Supply Co.](#), 43 Idaho 37, 248 P. 865 (1926).

Where claimant alleged that lien was filed on certain date, general denial did not justify judgment on pleadings since it was the notice and not the lien that was to be filed. [Linch v. Perrine](#), 51 Idaho 152, 4 P.2d 353 (1931).

### **Notice of Lien.**



Where notice of lien described crop only as a crop of apples and there were in fact no apple trees growing on land described, such notice was insufficient to create a lien. [Linch v. Perrine, 51 Idaho 152, 4 P.2d 353 \(1931\)](#).

Notice of lien could not be amended after statutory time for filing had elapsed. [Linch v. Perrine, 51 Idaho 152, 4 P.2d 353 \(1931\)](#).

The lien granted by former similar section was against the crop, not against the land; therefore, it was the crop which should have been described so that it might have located with reasonable certainty. The statute did not require a legal description of the property from which the crop was grown. [Sage v. Richtron, Inc., 108 Idaho 837, 702 P.2d 875 \(Ct. App. 1985\)](#).

#### **Notice to Vendee.**

The lien may be enforced against farm products sold to a vendee, even though the vendee did not receive notice of the lien, if he did not demand sworn, written notice required by this section. [Church v. Roemer, 94 Idaho 782, 498 P.2d 1255 \(1972\)](#).

#### **Sufficiency of Description.**

Description in farm laborer's lien notice which stated that it was intended to cover entire crop of hay produced for the year was sufficient and was not void for uncertainty. [Beckstead v. Griffith, 11 Idaho 738, 83 P. 764 \(1906\)](#).

Liens are not defective because the notices do not set forth the specific type of farm work performed in harvesting the crops; thus, a claim upon the crops "for labor performed, assistance rendered and expenses incurred" provides language meeting the essential requirements of former similar section. [Sage v. Richtron, Inc., 108 Idaho 837, 702 P.2d 875 \(Ct. App. 1985\)](#).

#### **Sufficiency of Notice and Claim of Lien.**

Where a notice of claim of lien was signed and verified before a notary public, filed in the proper county, and in substance stated the name of the owner, or reputed owner, of the crop for whom the work was done, who was lessee of the owner of the land on which the crops were grown, and the names of the parties who had possession of the crops at the time the lien was filed, and stated the work consisted of harvesting and hauling said crop

to market, and the pay therefor, and giving the total amount claimed, it was sufficiently certain as against a demurrer to the complaint to foreclose the lien. [Kerby v. Robinson, 58 Idaho 781, 80 P.2d 33 \(1938\)](#).

**§ 45-308A. Amendment or assignment of notice.** — (1) A claimant may amend a notice of claim of lien to disclose a change of the name or address of a claimant or producer by filing a notice of amendment with the secretary of state. The notice of amendment shall include:

(a) The file number assigned by the secretary of state to the notice of claim of lien to be amended by the notice of amendment; (b) The date of filing of the notice of claim of lien to be amended; (c) The name of the claimant on the notice of claim of lien to be amended; and (d) The information to be amended.

(2) A claimant may assign his rights under a lien and may give notice of the assignment by filing a notice of assignment with the secretary of state. The notice of assignment shall include: (a) The file number assigned by the secretary of state to the notice of claim of lien to which the assignment pertains; (b) The date of filing of the notice of claim of lien to which the assignment pertains; (c) The name of the claimant on the notice of claim of lien to which the assignment pertains; and (d) The name and address of the assignee.

(3) A notice of amendment or a notice of assignment shall be filed on a standard form prescribed by the secretary of state, and upon the same execution and fee conditions as apply to a notice of claim of lien.

### **History.**

I.C., § 45-308A, as added by 1997, ch. 35, § 1, p. 62.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Effective Dates.**

Section 2 of S.L. 1997, ch. 35 declared an emergency. Approved March 12, 1997.

**§ 45-309. Civil penalty for false claim.** — (1) Any person who signs and files a notice of claim of lien which he knows or has reason to believe is false shall be liable to the producer in the amount of the actual damages caused by the false claim or five hundred dollars (\$500), whichever is greater, plus reasonable attorney's fees and costs. If the claimant has failed to give written notice of a claim which is found to be false, to the producer as required by subsection (5) of [section 45-308, Idaho Code](#), the claimant shall be liable for an additional penalty of five hundred dollars (\$500).

(2) If the notice of claim of lien is signed by a person other than the claimant, and the claimant knows or has reason to believe the claim is false, the claimant and the person who signed the claim shall be jointly and severally liable for the amount described in subsection (1) of this section.

**History.**

[I.C., § 45-309](#), as added by 1989, ch. 359, § 2, p. 900; am. 1996, ch. 262, § 3, p. 862.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-309, which comprised 1893, p. 49, ch. 3, § 3; reen. 1899, p. 147, ch. 3, § 3; reen. R.C. & C.L., § 5143; C.S., § 7374; I.C.A., § 44-309, was repealed by S.L. 1989, ch. 359, § 1.

**CASE NOTES**

**Attorney Fees.**

The plaintiff, as the producer who succeeded on a false labor lien claim, was awarded costs and reasonable attorney fees on appeal. [Corder v. Idaho Farmway, Inc., 133 Idaho 353, 986 P.2d 1019 \(Ct. App. 1999\)](#).

**§ 45-310. Duration of lien.** — (1) A notice of claim of lien for farm labor remains in effect for twelve (12) months from the date of filing. The notice of claim of lien may be extended for six (6) months by filing a notice of extension of claim of lien. The notice of extension shall contain such information as the form prescribed by the secretary of state shall require, and shall be filed within sixty (60) days prior to the lapse of the original twelve (12) month period.

(2) A notice of claim of lien for seed remains in effect for sixteen (16) months from the date of filing. If a crop subject to a lien for seed is not harvested within ten (10) months after the date of filing, the notice of claim of lien may be extended for six (6) months by filing a notice of extension of claim of lien. The notice of extension shall contain such information as the form prescribed by the secretary of state shall require, and shall be filed within sixty (60) days prior to the lapse of the original sixteen (16) month period.

(3) Civil action to enforce a lien on crops shall be commenced within the periods set forth in subsections (1) and (2) of this section.

### **History.**

I.C., § 45-310, as added by 1989, ch. 359, § 2, p. 900; am. 2000, ch. 338, § 2, p. 1131.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 45-310, which comprised, 1895, p. 137, § 2; reen. 1899, p. 147, ch. 3, § 4; am. R.C. & C.L., § 5144; C.S., § 7375; am. 1923, ch. 24, § 1, p. 27; I.C.A., § 44-310, was repealed by S.L. 1989, ch. 359, § 1.

## **CASE NOTES**

### Decisions Under Prior Law Change in Parties.

Where action was commenced against one corporation, plaintiff could not, more than six months after its claim had been filed, bring in another related corporation as a party defendant. *Church v. Roemer*, 94 Idaho 782, 498 P.2d 1255 (1972).

**§ 45-311. Duty to release upon satisfaction.** — (1) When a claimant's lien has been satisfied, the claimant shall, within thirty (30) days after satisfaction, file with the secretary of state a notice of release of lien.

(2) The notice of release shall be signed by the claimant, his agent, or his attorney-in-fact.

(3) The notice of release shall be filed on a standard form prescribed by the secretary of state.

**History.**

I.C., § 45-311, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 45-312. List of liens in farm crops.** — (1) The secretary of state shall publish a list of all presently effective notices of claim of lien in farm crops. The list shall be distributed to all persons who register therefor, on a schedule to be set by administrative rule of the secretary of state, but not less frequently than semimonthly.

(2) The list shall be published in a format established by administrative rule of the secretary of state, and may be in either complete form or in cumulative supplements to a complete list.

**History.**

I.C., § 45-312, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.



**§ 45-313. Lien search.** — (1) Upon request the secretary of state shall issue a certificate listing all liens in crops of a particular producer for which notices of claim are on file in his office. The requesting party may additionally request copies of all relevant notices of claim of lien.

(2) Upon the request of any person, the secretary of state shall provide, within twenty-four (24) hours (excluding weekends and holidays), a verbal listing of liens in crops as described in subsection (1) of this section, followed by the certificate.

(3) The secretary of state shall, by administrative rule, prescribe the standards and forms for the lien searches described in this section.

**History.**

I.C., § 45-313, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 45-314. When buyer takes free of lien.** — (1) A buyer takes free of a lien in crops if he purchases and pays for a crop before a notice of claim of lien is filed with the secretary of state.

(2) A buyer who has registered for, and has received, the list of liens described in [section 45-312, Idaho Code](#), takes free of a lien in crops if: (a) When he purchases and pays for a crop, there is no notice of claim of lien in that crop on the current list of liens published under [section 45-312, Idaho Code](#); and (b) He has no actual notice of the existence of the lien.

As against buyers, a list is current until the third day after publication of the next list, or if mail is not delivered on that day, on the next day thereafter on which mail is delivered.

### **History.**

[I.C., § 45-314](#), as added by 1989, ch. 359, § 2, p. 900.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

## **CASE NOTES**

### **Decisions Under Prior Law Scope of Lien.**

Where the crops were delivered to a grain company before the plaintiffs filed their claims of liens, pursuant to this section, but the grain company still had possession of the crops and had not paid the purchase price when it received notice of the claimed liens, the proceeds from the sale of the crops was subject to the liens; thus, the bond or under-taking stood for the payment of any judgment, including costs and attorney's fees, rendered in favor of the lien claimants. [Sage v. Richtron, Inc., 108 Idaho 837, 702 P.2d 875 \(Ct. App. 1985\)](#).

**§ 45-315. Duty of buyer.** — A buyer who does not take free of a lien under [section 45-314, Idaho Code](#), is obligated to secure permission of the claimant to pay the producer in full or to insure payment of the claimant from the purchase price.

**History.**

[I.C., § 45-315](#), as added by 1989, ch. 359, § 2, p. 900.

**§ 45-316. Administrative rulemaking.** — The secretary of state shall promulgate such administrative rules as are necessary to implement the provisions of this chapter and to set fees for all services provided for in this chapter.

**History.**

I.C., § 45-316, as added by 1989, ch. 359, § 2, p. 900.

**§ 45-317. Effective date and transition.** — (1) This chapter shall be effective as to all notices of claim of lien in crops filed on or after January 1, 1990.

(2) Notices of claim of farm laborer's lien, and notices of claim of seed lien recorded in the appropriate county recorders' offices under the prior law shall remain effective until the date they would normally expire under the prior law.

**History.**

I.C., § 45-317, as added by 1989, ch. 359, § 2, p. 900.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 3 of S.L. 1989, ch. 359 read: "This act shall not take effect unless and until a sufficient appropriation to support its implementation is passed for the fiscal year 1990." An appropriation was made from the general appropriation to the secretary of state in order to implement this act and, therefore, it has gone into effect.

**§ 45-318. Applicability of uniform commercial code.** — The liens provided for by this chapter are “agricultural liens” as defined in [section 28-9-102, Idaho Code](#). The perfection and effect of perfection or nonperfection of the liens provided by this chapter are governed by uniform commercial code article 9, secured transactions (chapter 9, title 28, Idaho Code). In the event of any conflict between the provisions of this chapter relating to perfection and the effect of perfection or nonperfection of any lien provided by this chapter and the provisions of chapter 9, title 28, Idaho Code, relating to those same issues, the provisions of chapter 9, title 28, Idaho Code, shall prevail, except that a claim of lien under this chapter will be deemed by the secretary of state to meet the requirements of a farm products financing statement under chapter 9, title 28, Idaho Code.

**History.**

[I.C., § 45-318](#), as added by 2001, ch. 208, § 25, p. 704; am. 2016, ch. 202, § 2, p. 572.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2016 amendment, by ch. 202, added the exception at the end of the section.

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 31 of S.L. 2001, ch. 208 provided that the act should take effect on and after July 1, 2001.

Section 3 of S.L. 2016, ch. 202 declared an emergency. Approved March 24, 2016.



## Chapter 4

### LOGGERS' LIENS

Sec.

45-401. Liens upon saw logs.

45-402. Lien on lumber made from saw logs.

45-403. Lien for purchase price upon logs.

45-404. Liens preferred to other liens.

45-405. Time for filing lien for work or labor.

45-406. Time for filing liens for purchase price.

45-407. Claim of lien for work or labor.

45-408. Claim of lien for purchase price.

45-409. Record of claims.

45-410. Duration of lien.

45-411. Rules of practice and appeals.

45-412. Enforcement against whole or part of property.

45-413. Joinder of actions — Filing fees as costs — Attorney's fees.

45-414. Enforcement of judgments — Apportionment of proceeds.

45-415. Property may be sold as personalty.

45-416. Interference with property subject to lien — Liability to lienholder.

45-417. Interference with property subject to lien — Penalty — Bond.



**§ 45-401. Liens upon saw logs.** — Every person performing labor upon, or who shall assist in obtaining or securing, saw logs, spars, piles, cord wood, or other timber, has a lien upon the same for the work or labor done upon, or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook shall be regarded as a person who assists in obtaining or securing the timber herein mentioned.

**History.**

1893, p. 49, ch. 2, § 1; reen. 1899, p. 147, ch. 2, § 1; reen. R. C. & C.L., § 5125; C.S., § 7356; I.C.A., § 44-401.

**CASE NOTES**

Constitutionality.

Construction.

Filing with lumber inspector.

Lien on lumber made from logs.

Review of denial of penalty.

**Constitutionality.**

This section is not unconstitutional in that it imposes a hardship upon owner of the property. *Anderson v. Great N. Ry.*, 25 Idaho 433, 138 P. 127 (1914).

**Construction.**

Lien for services rendered in connection with hauling gravel and placing the gravel on mill yard site of the bankrupt, to facilitate stacking of lumber for drying and enable bankrupt to transport the logs to the mill, was not a lien for work, labor and services performed in logging or in manufacturing saw logs into lumber. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

This “loggers’ lien” statute is for the benefit of one who performs the labor and is not extended to one who hires the labor performed and pays for it. *Diamond Nat’l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

By this provision a person “performing work upon” any of the property herein enumerated is given the same lien as is given to a person who “assists in obtaining or securing” any such property. *Anderson v. Great N. Ry.*, 25 Idaho 433, 138 P. 127 (1914).

This section confers lien upon laborers who work in the employ of contractor in moving a large quantity of railroad ties a distance of a couple of hundred feet from place where they were piled upon railroad company’s right of way and loading them upon cars for transportation. *Anderson v. Great N. Ry.*, 25 Idaho 433, 138 P. 127 (1914).

Railroad ties sawed at sawmill in same manner as other lumber are not “other timber.” *Abernathy v. Peterson*, 38 Idaho 727, 225 P. 132 (1924).

### **Filing with Lumber Inspector.**

Claim of lien is not void between parties because not filed with lumber inspector as required by former statute. *Schultz v. Rose Lake Lumber Co.*, 27 Idaho 528, 149 P. 726 (1915).

### **Lien on Lumber Made from Logs.**

Laborer performing work in securing logs to be manufactured is entitled to a lien therefor on lumber manufactured from logs. *Abernathy v. Peterson*, 38 Idaho 727, 225 P. 132 (1924).

### **Review of Denial of Penalty.**

Where plaintiff brings an action seeking to recover wages and penalty for nonpayment, and the trial court holds against him with respect to the penalty, and the defendant appeals, the supreme court will not reverse the ruling of the court on denial of the penalty. *People ex rel. Heartburg v. Interstate Eng’g & Constr. Co.*, 58 Idaho 457, 75 P.2d 997 (1937).

**Cited** *Boone v. P & B Logging Co.*, 88 Idaho 111, 397 P.2d 31 (1964).

**§ 45-402. Lien on lumber made from saw logs.** — Every person performing labor upon, or who shall assist in manufacturing saw logs into lumber, has a lien upon such lumber while the same remains at the mill where manufactured, whether such work or labor was done at the instance of the owner of such logs or of his agents.

### **History.**

1893, p. 49, ch. 2, § 2; reen. 1899, p. 147, ch. 2, § 2; reen. R.C. & C.L., § 5126; C.S., § 7357; I.C.A., § 44-402.

## **CASE NOTES**

### **Construction.**

Lien for services rendered in connection with hauling gravel and placing the gravel on mill yard site of the bankrupt, to facilitate stacking of lumber for drying and enable bankrupt to transport the logs to the mill, was not a lien for work, labor and services performed in logging or in manufacturing saw logs into lumber. [Diamond Nat'l Corp. v. Lee, 333 F.2d 517 \(9th Cir. 1964\)](#).

“At the mill” does not mean exclusively “contiguous to” or “attached to” the mill, but may mean “near,” “in the vicinity of,” or “connected with” the mill. [Abernathy v. Peterson, 38 Idaho 727, 225 P. 132 \(1924\)](#).

Lumber and railroad ties sawed at sawmill and taken directly from mill to lumber yard, six miles away, which yard was the only one used in connection with the mill and the only one controlled by operators of mill, remained “at the mill where manufactured.” [Abernathy v. Peterson, 38 Idaho 727, 225 P. 132 \(1924\)](#).

Railroad ties sawed at sawmill in same manner as other lumber are “lumber,” as the term is used in this section, and not “other timber,” as used in § 45-403. [Abernathy v. Peterson, 38 Idaho 727, 225 P. 132 \(1924\)](#).

An electrician who was personally employed by the owners of mill, and who personally performed work, was a “person,” under the loggers’ lien statute. [Boone v. P & B Logging Co., 88 Idaho 111, 397 P.2d 31 \(1964\)](#).

Where, during construction of mill, electrician ran conduits, installed lighting and connected motors, but did no maintenance or repair work connected with operation of the mill, his labor clearly entitled him to a lien on the mill, property of his employer, under § 45-501, but not a logger's lien under this section. *Boone v. P & B Logging Co.*, 88 Idaho 111, 397 P.2d 31 (1964).

**§ 45-403. Lien for purchase price upon logs.** — Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles, cord wood or other timber, has a lien upon such logs, spars, piles, cord wood and timber, for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

**History.**

1893, p. 49, ch. 2, § 3; reen. 1899, p. 147, ch. 2, § 3; reen. R.C. & C.L., § 5127; C.S., § 7358; I.C.A., § 44-403.

**CASE NOTES**

Application of payment.

Construction.

Filing with lumber inspector.

Waiver.

**Application of Payment.**

In bankruptcy proceeding involving the state's claim of lien against nonwarehoused logs and lumber, for the sales price of the timber involved, substantial evidence supported referee's finding that payment of stumpage under the bankrupt's contract was erroneous. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**Construction.**

The language of lien statutes in regard to timber cut into logs and removal of slash does not require that the lienor assert his lien against any particular parcel or parcels of lumber. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**Filing with Lumber Inspector.**

Claim of lien is not void between parties because not filed with lumber inspector as required by former statute. *Schultz v. Rose Lake Lumber Co.*,

27 Idaho 528, 149 P. 726 (1915).

**Waiver.**

Where state claimed a lien against nonwarehoused logs and lumber, but not against remainder of the lumber on the debtor's premises, such was not a waiver of the right to collect the entire sum due. *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**§ 45-404. Liens preferred to other liens.** — The liens provided for in this chapter are prior to any other liens, and no sale or transfer of any saw logs, spars, piles, cord wood or other timber or manufactured lumber shall divest the lien thereon as herein provided, and such lien shall follow such property into any county in this state into which the same may be removed: provided, notice of such lien shall have been filed in such county.

**History.**

1893, p. 49, ch. 2, § 4; reen. 1899, p. 147, ch. 2, § 4; reen. R.C. & C.L., § 5128; C.S., § 7359; I.C.A., § 44-404.

**§ 45-405. Time for filing lien for work or labor.** — The person rendering the service or doing the work or labor named in sections 45-401 and 45-402[, Idaho Code,] is only entitled to the liens as provided herein for services, work or labor, for the period of eight (8) calendar months next preceding the filing of the claim, as provided in section 45-407[, Idaho Code].

**History.**

1893, p. 49, ch. 2, § 5; reen. 1899, p. 147, ch. 2, § 5; reen R.C. & C.L., § 5129; C.S., § 7360; I.C.A., § 44-405.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions near the beginning and near the end of the section were added by the compiler to conform to the statutory citation style.



**§ 45-406. Time for filing liens for purchase price.** — The person granting the privilege mentioned in section 45-403[, Idaho Code,] is entitled to the lien as provided therein for saw logs, spars, piles, cord wood and other timber, cut during the eight (8) months next preceding the filing of the claim, as provided in the next succeeding section.

**History.**

1893, p. 49, ch. 2, § 6; reen. 1899, p. 147, ch. 2, § 6; reen. R.C. & C.L., § 5130; C.S., § 7361; I.C.A., § 44-406.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 45-407. Claim of lien for work or labor.** — Every person, within sixty (60) days after the close of the rendition of the services, or after the close of the work or labor mentioned in sections 45-401 and 45-402, Idaho Code, claiming the benefit hereof, must file for record with the county recorder of the county in which such saw logs, spars, piles, cordwood or other timber was cut, or in which such lumber was manufactured, or, if removed to another county, then in such county, a notice of claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible, all just credits and offsets, with the name of the person by whom he was employed. The notice of claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien, sufficient for identification, with reasonable certainty, which notice of claim must be verified by the oath of himself, his agent or attorney, to the effect that the affiant believes the same to be true. Such notice of claim shall be substantially in the following form:

.... claimant, vs. ....

Notice is hereby given that .... of .... county, state of Idaho, claims a lien upon a .... of .... being about .... in quantity, which were cut in .... county, state of Idaho, are marked thus ...., and are now lying in .... for labor performed upon and assistance rendered in .... said ....; that the name of the owner or reputed owner is ....; that .... employed said .... to perform such labor and render such assistance upon the following terms, to wit: The said .... agreed to pay the said .... for such labor and assistance ....; that said contract has been faithfully performed and fully complied with on the part of said ...., who performed labor upon and assisted in .... said .... for the period of .... that said labor and assistance were so performed and rendered upon said .... between the .... day of .... and the .... day of ...., and the rendition of said services was closed on the .... day of .... and .... days have not elapsed since that time; that the amount of claimant's demand for said services is ....; that no part thereof has been paid except ...., and there is now due and unpaid thereon, after deducting all just credits and offsets, the sum of ...., in which amount he claims a lien upon said .....

State of Idaho, .... county, ss.

...., being first duly sworn, on oath says that he is .... named in the foregoing claim, has heard the same read and knows the contents thereof, and believes the same to be true .....

Subscribed and sworn to before me this .... day of ....., .....

### **History.**

1893, p. 49, ch. 2, § 7; reen. 1899, p. 147, ch. 2, § 7; reen. R.C. & C.L., § 5131; C.S., § 7362; I.C.A., § 44-407; am. 2002, ch. 32, § 17, p. 46.

## **CASE NOTES**

Description of property.

Filing with lumber inspector.

Oral notice.

Single claim sufficient.

Substantial compliance.

Sufficient service.

### **Description of Property.**

The description in the notice of lien was sufficient in that it stated the property as a stated number of board feet cut and lying in a named county even though it does not recite what species of timber the logs were cut from, identification being a matter of proof. *Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963).

The description of the property to be charged with the lien is required to be only such as will be “sufficient for identification.” If there appears enough in the description to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty to the exclusion of others, it will be sufficient. *Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963).

### **Filing with Lumber Inspector.**

Claim of lien not void as against parties thereto by reason of not being recorded by lumber inspector under former statute. *Schultz v. Rose Lake Lumber Co.*, 27 Idaho 528, 149 P. 726 (1915).

### **Oral Notice.**

Oral advice of a claim of lien is not a sufficient compliance with this section. *Ashley Glass Co. v. Hoff*, 123 Idaho 544, 847 P.2d 1171 (1993).

### **Single Claim Sufficient.**

Where laborer seeks lien against manufactured product for work done under both §§ 45-401 and 45-402, he need not segregate the two amounts, but may file one claim for both. *Abernathy v. Peterson*, 38 Idaho 727, 225 P. 132 (1924).

### **Substantial Compliance.**

In considering a contention challenging the sufficiency of compliance with statutory requisites, the court held that a substantial compliance in good faith meets such requirement; that the provisions of the lien statutes must be liberally construed in favor of the claimant with a view to effect their object and promote justice. *Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963).

### **Sufficient Service.**

To be effective, a copy of a mechanic's or materialman's lien must be served on the "owner or reputed owner" within 24 hours of its being filed. *Ashley Glass Co. v. Hoff*, 123 Idaho 544, 847 P.2d 1171 (1993); *Ashley Glass Co. v. Hoff*, 123 Idaho 544, 850 P.2d 193 (1993).

**Cited** *Beckstead v. Griffith*, 11 Idaho 738, 83 P. 764 (1906); *Church v. Roemer*, 94 Idaho 782, 498 P.2d 1255 (1972).

**§ 45-408. Claim of lien for purchase price.** — Every person mentioned in section 45-403[, Idaho Code,] claiming the benefit hereof, must, within ninety (90) days after such cutting, file for record with the county recorder of the county in which such saw logs, spars, piles, cord wood or other timber was cut, a claim in substance the same as provided in the next preceding section, and verified as therein provided.

**History.**

1893, p. 49, ch. 2, § 8; reen. 1899, p. 147, ch. 2, § 8; reen. R.C. & C.L., § 5132; C.S., § 7363; I.C.A., § 44-408.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 45-409. Record of claims.** — The county recorder must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

**History.**

1893, p. 49, ch. 2, § 9; reen. 1899, p. 147, ch. 2, § 9; reen. R.C. & C.L., § 5133; C.S., § 7364; I.C.A., § 44-409.

**§ 45-410. Duration of lien.** — No lien provided for in this chapter binds any saw logs, spars, piles, cord wood or other timber, or any lumber, for a longer period than six (6) calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same.

**History.**

1893, p. 49, ch. 2, § 10; reen. 1899, p. 147, ch. 2, § 10; reen. R.C. & C.L., § 5134; C.S., § 7365; I.C.A., § 44-410.

**CASE NOTES**

**Parties Added After Six Months.**

In considering a contention challenging the sufficiency of compliance with statutory requisites, the court held that a substantial compliance in good faith meets such requirement; that the provisions of the lien statutes must be liberally construed in favor of the claimant with a view to effect their object and promote justice. *Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963).

**§ 45-411. Rules of practice and appeals.** — Except as otherwise provided in this chapter the provisions of this code relating to civil actions, new trials and appeals are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter.

**History.**

1893, p. 49, ch. 2, § 11; reen. 1899, p. 147, ch. 2, § 11; reen. R.C. & C.L., § 5135; C.S., § 7366; I.C.A., § 44-411.

**STATUTORY NOTES**

**Cross References.**

Appeals, § 13-201 et seq.

New trials, [Idaho R. Civ. P. 59\(a\)](#).

**CASE NOTES**

**Cited** [Nohrnberg v. Boley](#), 42 Idaho 48, 246 P. 12 (1925); [Burlile v. Leith](#), 47 Idaho 537, 277 P. 428 (1929).



**§ 45-412. Enforcement against whole or part of property.** — Any person who shall bring a civil action to enforce the lien as herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has a right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, cord wood or other timber or manufactured lumber, upon which he has performed labor or which he has assisted in obtaining or securing, or which has been cut on his timber land during the eight (8) months mentioned in sections 45-405 and 45-406[, Idaho Code], for all his labor upon, or for all his assistance in obtaining or securing, said logs, spars, piles, cord wood or other timber, or in manufacturing said lumber during the whole or any part of the eight (8) months mentioned in section 45-405[, Idaho Code], or for timber cut during the whole or any part of the eight (8) months mentioned in section 45-406[, Idaho Code].

**History.**

1893, p. 49, ch. 2, § 12; reen. 1899, p. 147, ch. 2, § 12; reen. R.C. & C.L., § 5136; C.S., § 7367; I.C.A., § 44-412.

**STATUTORY NOTES**

**Cross References.**

Indexes to be kept, § 31-2404.

Recorder's fees, § 31-3205.

**Compiler's Notes.**

The bracketed insertions near the middle and near the end of the section were added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Personal Liability.**

A logging company's direct contractual relationship with lessees did not provide a reasonable basis to seek a personal judgment against a lessor, and

its sole cause of action was for payment of logging-related work secured by a loggers' lien. *Montane Resource Assocs. v. Greene*, 132 Idaho 458, 974 P.2d 510 (1999).

**Cited** *Diamond Nat'l Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

**§ 45-413. Joinder of actions — Filing fees as costs — Attorney's fees.**

— Any number of persons claiming liens against the same property under this chapter may join in the same action, and when separate actions are commenced, the court may consolidate them. The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

**History.**

1893, p. 49, ch. 2, § 13; reen. 1899, p. 147, ch. 2, § 13; reen. R.C. & C.L., § 5137; C.S., § 7368; I.C.A., § 44-413.

**CASE NOTES**

**Award Improper.**

Where the plaintiffs were never provided any opportunity to raise a defense to an award of attorney fees, the district court erred in awarding fees to the defendant. *Bingham v. Montane Resource Assocs.*, 133 Idaho 420, 987 P.2d 1035 (1999).

**§ 45-414. Enforcement of judgments — Apportionment of proceeds.**

— In such civil action judgments must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for, to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale for the payment of each judgment pro rata, according to the amount of such judgment.

**History.**

1893, p. 49, ch. 2, § 14; reen. 1899, p. 147, ch. 2, § 14; reen. R.C. & C.L., § 5138; C.S., § 7369; I.C.A., § 44-414.

**§ 45-415. Property may be sold as personalty.** — The court or judge may order any property subject to a lien as in this chapter provided, to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered as provided in the section next preceding, and the proceeds of such sale must be paid into court to be applied as in such section directed.

**History.**

1893, p. 49, ch. 2, § 15; reen. 1899, p. 147, ch. 2, § 15; reen. R.C. & C.L., § 5139; C.S., § 7370; I.C.A., § 44-415.

**STATUTORY NOTES**

**Cross References.**

Sales on execution, § 11-302 et seq.

**§ 45-416. Interference with property subject to lien — Liability to lienholder.** — Any person who shall injure, impair or destroy, or who shall render difficult, uncertain or impossible of identification, any saw logs, spars, piles, cord wood or other timber, upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lienholder for the damages to the amount secured by his lien, plus reasonable attorney's fees to be fixed by the court, which may be recovered by civil action against such person.

**History.**

1893, p. 49, ch. 2, § 16; reen. 1899, p. 147, ch. 2, § 16; reen. R.C. & C.L., § 5140; C.S., § 7371; am. 1923, ch. 156, § 1, p. 227; I.C.A., § 44-416.

**CASE NOTES**

**Constitutionality.**

**Purpose.**

**Constitutionality.**

This section is not obnoxious to the **fourteenth amendment to the federal constitution** as depriving anyone of his property without due process of law or denying him the equal protection of the laws. **Anderson v. Great N. Ry., 25 Idaho 433, 138 P. 127 (1914).**

**Purpose.**

Purpose and intent of this section is to render every person who injures, destroys, or removes any of the property therein described on which a lien exists liable for the amount of claim held against property, or if property be of less value than lien claimed, then it allows claimant the damages which he has sustained by reason of the removal or destruction of the particular property. **Anderson v. Great N. Ry., 25 Idaho 433, 138 P. 127 (1914).**

**§ 45-417. Interference with property subject to lien — Penalty — Bond.** — Any person or persons who shall, after the filing for record in the county recorder's office in the county of which said labor was performed, or in which said logs, spars, piles, cord wood or other timber are located, of a claim of lien as in this chapter provided, remove, dispose of, injure, impair or destroy or who shall render difficult, uncertain or impossible of identification any such saw logs, spars, piles, cord wood, or other timber products upon which there is a lien as herein provided, or any person or persons who shall aid or assist in doing any of the acts above prohibited shall be guilty of a misdemeanor and upon conviction may be imprisoned in the county jail for not more than six (6) months or shall be fined not less than \$100 nor more than \$300, or shall suffer both such fine and imprisonment in the discretion of the court, unless prior to such removing, disposing of, injuring, impairing, or destroying, or rendering uncertain or impossible of identification, a bond in double the amount of the lien claim, said bond to be approved by the clerk of the district court and running to the lien claimant or claimants, the condition of said bond being that the owner of said logs or other timber products liened upon will pay any judgment, including costs and reasonable attorney fees to be assessed by the court, rendered in favor of such lien claimant or claimants, shall be filed with the county auditor of the county where said lien is filed or in lieu of said bond, as the case may be, deposit with said auditor a sum equal to double the amount claimed in said lien.

**History.**

C.S., § 7371A, as added by 1923, ch. 156, § 2, p. 227; I.C.A., § 44-417.

**CASE NOTES**

**Cited** *Turnboo v. Keele*, 86 Idaho 101, 383 P.2d 591 (1963).





## Chapter 5

### LIENS OF MECHANICS AND MATERIALMEN

Sec.

45-501. Right to lien.

45-502, 45-503. [Repealed.]

45-504. Lien for improving lots.

45-505. Land subject to lien.

45-506. Liens preferred claims.

45-507. Claim of lien.

45-508. Claims against two buildings.

45-509. Record of lien claims.

45-510. Duration of lien.

45-511. Recovery by contractor — Deduction of debts to subcontractors.

45-512. Judgment to declare priority.

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45-514. Exemption of materials from execution.

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45-518. Release of lien on real property by posting surety bond — Manner.

45-519. Release of lien on real property by posting surety bond — Form of bond.

45-520. Release of lien on real property by posting surety bond — Petition for release — Service of copy of petition.

45-521. Release of lien on real property by posting surety bond — Hearing on petition — Contents and effect of order releasing lien.

- 45-522. Release of lien on real property by posting surety bond — Action against debtor and surety — Preferential settings.
- 45-523. Release of lien on real property by posting surety bond — Motion to enforce liability of surety.
- 45-524. Release of lien on real property by posting surety bond — Exception to sufficiency of surety.
- 45-525. General contractors — Residential property — Disclosures.

**§ 45-501. Right to lien.** — Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

For purposes of this chapter the term “furnishing material” shall also include, notwithstanding any other provision of law to the contrary, supplying, renting or leasing equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#).

“Furnishing material” shall also include renting, leasing or otherwise supplying any equipment, materials, fixtures or machinery to any mine or mining claim.

### **History.**

1893, p. 49, ch. 1, § 1; reen. 1899, p. 147, ch. 1, § 1; reen. R.C. & C.L., § 5110; C.S., § 7339; I.C.A., § 44-501; am. 1951, ch. 199, § 1, p. 422; am. 1971, ch. 91, § 1, p. 196; am. 1998, ch. 269, § 1, p. 898; am. 2001, ch. 152, § 1, p. 550.

# STATUTORY NOTES

## **Cross References.**

Employers to post and record statements for protection of mechanics, § 44-501 et seq.

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### **Acknowledgement Required.**

Claims of mechanics' and materialmen's liens filed under this chapter must be acknowledged in accord with § 55-805 before they are entitled to be recorded, and the "verification" required under § 45-507 does not serve the same purpose or function of an "acknowledgement" and cannot be a substitute therefor; accordingly, liens that were not acknowledged, or were acknowledged but where the certificate of acknowledgment did not substantially comply with Title 55, [Chapter 7 of the Idaho Code](#), were not enforceable against the bankruptcy trustee. [Kloos v. Jacobson, 30 Bankr. 965 \(Bankr. D. Idaho 1983\)](#).

### **Agent Having Power to Employ Labor.**

Where a contract for the sale of mining property provided that the purchasers were to complete an objective tunnel on said property to a certain distance within a specified time, it constituted the purchaser of the property an agent of the seller, entitling laborers employed to do the work to

file liens on the property. *Hendrix v. Gold Ridge Mines, Inc.*, 56 Idaho 326, 54 P.2d 254 (1936).

### **Agent of Owner.**

Where credit is given to party in possession of a mining claim under an option to purchase and not to owner, no lien is enforceable against owner or his property. *Steel v. Argentine Mining Co.*, 4 Idaho 505, 42 P. 585 (1895).

Every contractor, subcontractor, architect, builder, or other person having charge of building, or of its alteration or repair, shall be held to be agent of owner for purposes of lien law. *McGill v. McAdoo*, 35 Idaho 283, 206 P. 1057 (1922); *Boise Payette Lumber Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

Contractor is statutory agent of owner for purpose of giving lien on premises by one who performs labor for contractor, but not for purpose of making laborer employed by contractor the direct contract employee of owner. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Where contract for sale of real estate obligates purchaser to erect building, contract constitutes vendee agent of vendor and latter is person who causes building to be constructed within meaning of statute. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928).

In action to foreclose mechanic's lien, claimed for services in superintending construction of mercury ore reduction plant, defendant was not estopped to set up defense that payment was conditional upon success of plant by theory that failure was fault of original contractor as agent of owner. *Smith v. Boyden*, 49 Idaho 638, 290 P. 377 (1930).

The mere relationship of landlord and tenant does not make the tenant the agent of the landlord for the furnishing of material or labor, hence the interest of the landlord is not subject to a mechanic's lien for material and labor furnished under contract with the tenant unless there is consent or ratification thereto by the landlord. *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955).

As a general principle, a tenant is not the "agent" of the landlord, for the purpose of this section, merely by virtue of a lessor-lessee relationship; however, a landlord's interest in real property may be subjected to a lien, for work performed by agreement with the tenant, if the lease specifically

requires the tenant to see that the work is done or, alternatively, the landlord's interest may be subjected to a lien if he requests the work to be done. The latter alternative applies to any case where the landlord has done some act in ratification of, or consent to, the work done and the furnishing of material and labor. *Christensen v. Idaho Land Developers, Inc.*, 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983).

Where lease or contract of purchase requires lessee (or vendee) to make certain improvements, then the lessee (or vendee) is said to become the agent of the owner, and in those cases the interest of the owner as well as the interest of the lessee or vendee will become subject to the lien. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

A tenant is not the "agent" of the landlord, for purposes of this section, merely by virtue of a lessor-lessee relationship; the burden of proving agency rests upon the party asserting it. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

#### **Attempted Creation by Trespasser.**

One who unlawfully goes into possession of mining property against consent of owner cannot create liens against the property, under this section. *Idaho Gold Mining Co. v. Winchell*, 6 Idaho 729, 59 P. 533 (1899).

#### **At the Instance of the Owner.**

The phrase "at the request of the owner," in § 45-504 has the same meaning as the phrase "at the instance of the owner" in this section. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

The owner's knowledge and acquiescence in improvements are not sufficient to justify charging his interest with a lien; the improvement must have been "requested" by the owner of the land. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

#### **Attorney Fees.**

If a contractor is awarded a foreclosure of his materialman's lien, a reasonable attorney fee is an incident thereof. *Barber v. Honorof*, 116 Idaho 767, 780 P.2d 89 (1989).

#### **Breach of Contract by Lienholder.**



Where a contractor performed work under a construction contract in an unworkmanlike manner and left the premises in an unfinished condition, he had not substantially performed his contract and was not entitled to foreclosure of his lien. [Nelson v. Hazel](#), 89 Idaho 480, 406 P.2d 138 (1965).

### **Breach of Contract by Owner Will Not Defeat Lien Rights.**

Bearing in mind that the lien statute protects a contractor for all labor performed and materials furnished in either contracting or reconstructing a building, and that such statute must be liberally construed with the object in view of promoting justice, the owner of a building, reconstructed by a contractor, cannot deprive him of the protection of the statute by breaching the contract under which the labor was performed and materials furnished, since this would permit the owner to take advantage of, and profit by, his own wrong. [Dybvig v. Willis](#), 59 Idaho 160, 82 P.2d 95 (1938).

### **Claim of Materialman.**

In order for a materialman to enforce his lien, it is not necessary for him to attempt to collect the payment from the original contractor before resorting to his lien rights. [Idaho Lbr. & Hdw. Co. v. DiGiacomo](#), 61 Idaho 383, 102 P.2d 637 (1940).

A materialman who furnished building materials to a contractor upon an open running account without designation of any of such materials for any specific job in reliance exclusively upon the credit of the contractor is not entitled to a lien under this section. [Layrite Prods. Co. v. Lux](#), 91 Idaho 110, 416 P.2d 501 (1966).

A supplier of materials who, pursuant to agreement with builder of which mortgagee was not cognizant, applied payments received from mortgagee and designated for the current project first to the unpaid balance on a previous project and refused a tender by the mortgagee of the balance due on the current project was not entitled to a lien on the current project premises. [Mountain Home Redi-Mix v. Conner Homes, Inc.](#), 91 Idaho 612, 428 P.2d 744 (1967).

In the absence of oppression or some other circumstances which would have justified denial of a foreclosure on a materialman lien, there was no reason it should not have been granted, even though the contractor failed to

establish his right to the full amount claimed and was ultimately awarded a lesser amount. *Barber v. Honorof*, 116 Idaho 767, 780 P.2d 89 (1989).

Supplier of building materials who delivered the materials to another supplier rather than a subcontractor was too remote to the owner of a house that was built to utilize statutory mechanic's lien provisions and foreclose on the house. *L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 40 P.3d 96 (2002).

### **Claim of Subcontractor.**

In an action to recover upon a mechanic's lien, although the prime contractor could have filed his lien for the reasonable value of the services performed and pay over the amount due to the subcontractor, the subcontractor could independently file a lien. *Weber v. Eastern Idaho Packing Corp.*, 94 Idaho 694, 496 P.2d 693 (1972).

### **Commencement and Duration of Lien.**

This section, in conjunction with § 45-506, covers liens from the beginning or the commencement of work and the furnishing of materials. *White v. Constitution Min. & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936).

### **Construction.**

Where, during construction of mill, electrician ran conduits, installed lighting and connected motors, but did no maintenance or repair work connected with operation of the mill, his labor clearly entitled him to a lien on the mill property of his employer under this section, but not a logger's lien under § 45-402. *Boone v. P & B Logging Co.*, 88 Idaho 111, 397 P.2d 31 (1964).

Under the statute, the legislature evidently intended to grant the right to claim a lien to any person who contributed labor or materials for the construction, alteration, or repair of a building or structure upon real property. *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 41 P.3d 242 (2001).

### **Counterclaim and Setoff.**

Where a counterclaim amounts to a complete setoff against the amount of the lien, the lienholder is not entitled to foreclosure nor attorney's fees.

Dawson v. Eldredge, 89 Idaho 402, 405 P.2d 754 (1965).

### **Evidence.**

Although Idaho statutes do not specifically require substantial performance of a contract before a lien attaches, according to Idaho case law, a contractor is required to demonstrate substantial performance. Thus, evidence of construction defects was relevant and should have been admitted in a dispute regarding the construction of a log home. *Perception Constr. Mgmt. v. Bell*, 151 Idaho 250, 254 P.3d 1246 (2011).

### **Extent of Lien.**

Rights of lien claimant who is a contractor or subcontractor under the person, company or association which has a Carey Act contract from the state will extend to all rights, interests, claim, and title of such company in and to the works and irrigation system and lands thereunder, but lien claimant cannot, by foreclosure of his lien, acquire any greater right than that possessed by such company or association. *Nelson Bennett Co. v. Twin Falls Land & Water Co.*, 14 Idaho 5, 93 P. 789 (1908).

Lien extends only to such right, title and interest as owner had in the property at time lien attached. *Smith v. Faris-Kesl Constr. Co.*, 27 Idaho 407, 150 P. 25 (1915).

Owners' interest in mining claims is not lienable for work done at instance of their tenant, unless they made him their agent within meaning of the provisions of this section. *Nicholson v. Smith*, 31 Idaho 544, 174 P. 1008 (1918).

Lien against Carey Act irrigation system extends only to such interest as company had therein when lien attached. *Pacific Coast Pipe Co. v. Blaine County Irrigation Co.*, 32 Idaho 705, 187 P. 940 (1920).

### **Filing Not a Taking.**

The filing of a lien under this chapter is not a violation of due process, since there is no taking of a significant property interest. *Kloos v. Jacobson*, 30 Bankr. 965 (Bankr. D. Idaho 1983).

### **Finding Required as to Amount of Ground Necessary for Use.**

Where record disclosed no evidence concerning amount of land necessary for convenient use and occupation of dwelling for improvement, of which materials were furnished by lumber company, which foreclosed materialman's lien, finding that the whole of the realty described in complaint was necessary for convenient use of dwelling was error and cause was required to be remanded for the purpose of receiving evidence thereon. *Idaho Lbr. & Hdwe. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Findings on Conflicting Evidence.**

A conflict in the evidence in an action to enforce a materialman's lien will not warrant the overturning of the court's findings. *Idaho Lbr. & Hdwe. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

In an action to foreclose a mechanic's lien for drilling a well, where the evidence was conflicting as to whether the well deviated from the perpendicular, as to whether the casing was broken and the effect of the alleged break upon the purity of the water, the finding of the court that the work was done in a good and workmanlike manner was conclusive. *Durfee v. Parker*, 90 Idaho 118, 410 P.2d 962 (1965).

### **Fuel Costs.**

Recovery for fuel is not permissible under the mechanic's lien statute because such is not labor and materials consumed in the process of structurally improving real property. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

### **Insurance.**

The providing of liability insurance coverage was neither labor nor material that was consumed in the process of structurally improving real property, and a claim for unpaid premiums relating to general liability and equipment insurance was not protected by the state's lien statutes. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

While the legislature has provided protection for the recovery of worker's compensation security in the mechanic's lien laws, it has not so provided for any other form of insurance. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

### **Interest on Claims of Laborers.**

Interest on claim of laborers is not allowable from the date the work is finished, but is allowable after the expiration of three months from the date of the last item. *Hendrix v. Gold Ridge Mines, Inc.*, 56 Idaho 326, 54 P.2d 254 (1936).

Plaintiff who leveled land of defendant pursuant to oral agreement but without any stipulation as to charges, and who recovered on the basis that a reasonable charge was \$10 a day was entitled to recover interest at legal rate from date work was completed. *Guyman v. Anderson*, 75 Idaho 294, 271 P.2d 1020 (1954).

### **Interest on Lien.**

Where garnishee judgments were entered against the defendants in an action by several subcontractors to foreclose their materialmen's liens, but the amount deposited with the court by the defendants as full satisfaction of the garnishee judgments was actually less than the amount owed by the defendants, the court did not err in allowing interest to accrue on the lien amounts from the date they became due until the date that the full amounts were paid, since the tendered amount was less than the amount found due by the court and such tender did not estop the accumulation of interest upon any part of the debt. *Acoustic Specialties, Inc. v. Wright*, 103 Idaho 595, 651 P.2d 529 (1982).

The statutory rate of interest to building supplier's materialman's lien on property owners' home was proper; a lack of privity between the supplier and the owners precluded application of contract interest. *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 87 P.3d 955 (2004).

### **Irrigation Works.**

Irrigation works constructed under the Carey Act are subject to the mechanic's lien law. *Continental & Com. Trust & Sav. Bank v. Corey Bros. Constr. Co.*, 208 F. 976 (9th Cir. 1913).

Performance of labor upon irrigation works authorizes lien thereon. *Hill v. Twin Falls Salmon River Land & Water Co.*, 22 Idaho 274, 125 P. 204 (1912).

Property of irrigation district is not subject to mechanic's lien. *Storey & Fawcett v. Nampa & Meridian Irrigation Dist.*, 32 Idaho 713, 187 P. 946 (1920).

### **Judgment for Excess.**

In an action to foreclose a mechanic's lien brought by a subcontractor who furnished labor and materials in connection with the installation of a heating system in a dwelling, the subcontractor was not entitled to a personal judgment against the homeowner for any deficiency which might remain after the foreclosure sale, where the homeowner was not in a direct contractual relationship with the subcontractor. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

### **Judgment Not Reversed Because Allegedly Unlienable Item Claimed.**

Where, in his complaint, the contractor alleged, among other things, that the owner employed him to draw plans and specifications for the repair and reconstruction of a residence, and the owner contended that the contractor was not entitled to a lien for this service, a judgment for a lump sum will not be disturbed on appeal, when it cannot be determined whether the court actually allowed anything for such service. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

### **Judgment Notwithstanding the Verdict.**

Where the district court concluded that an insurer's recovery on its claim of lien was barred by the open account defense because substantial evidence demonstrated that the claimant attributed none of the insured's premiums to its work in Idaho, the court's decision to enter judgment notwithstanding the verdict was affirmed. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

### **Labor, Payments Properly Applied to.**

In a lumber company's action to foreclose a materialman's lien, evidence sustained finding that amounts paid by owners of building to lumber company on contractor's demand and placed by company in labor account and paid out to laborers at instance of contractor and upon payroll furnished company by contractor were properly applied to labor account instead of to materials account. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Landlord's Interest Subject to Lien.**

Where lease required that the tenants maintain the premises, and that they refrain from any unlawful use of the premises and where the landlord forwarded to the tenants the city electrical inspector's letter enumerating 31 corrections needed in the electrical system on the premises, landlord's interest was lienable on both the ground that the lease specifically required the work in question and on the ground that the landlord's act of forwarding the city's letter to the tenants represented a ratification or a consent for the work to be done. *Christensen v. Idaho Land Developers, Inc.*, 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983).

### **Liberal Construction.**

The provisions of this and cognate sections are liberally construed in the favor of the workman to obtain the ends of justice. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

Since the purpose of this section is to compensate persons who perform labor upon or furnish materials to be used in the construction, alteration, or repair of a building or structure, this section will be liberally construed but the statutory requirements must be substantially complied with in order to perfect a valid mechanic's lien. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

### **Lienable Items.**

Person employed as foreman and watchman of a mine does not perform services of a professional or supervisory character, so as to preclude him from being entitled to a lien for his services under this section. *Idaho Mining & Milling Co. v. Davis*, 123 F. 396 (9th Cir. 1903).

Lien may be filed to secure profits upon contract when such profits are included in contract. *Naylor v. Lewiston & S.E. Elec. Ry.*, 14 Idaho 789, 96 P. 573 (1908).

Charge for the use of tools in construction work, for which employer agrees to pay, is a lienable item. *Naylor v. Lewiston & S.E. Elec. Ry.*, 14 Idaho 789, 96 P. 573 (1908).

Services performed as superintendent in superintending construction of railroad work constitute a lienable item. *Naylor v. Lewiston & S.E. Elec.*



Ry., 14 Idaho 789, 96 P. 573 (1908).

Lien will be allowed for material furnished and actually used and consumed in the construction of the building or other structure, irrespective of fact that such use and consumption may not be in the main building or structure itself, but was necessarily incident to the carrying on of principal work and discharging of contract. *Chamberlain v. Lewiston*, 23 Idaho 154, 129 P. 1069 (1912).

Lien cannot be allowed for tools and appliances which are the property of contractors and may be used from time to time in other works and upon other contracts, and which are not consumed in the work or which do not go as a part of the building or improvement and necessarily enter therein. *Ninneman v. Lewiston*, 23 Idaho 169, 129 P. 1073 (1912).

Fact that contract contemplates construction of a sewer in connection with and as part of houses built under such contract brings services performed in putting in the sewer within the purview of this section and § 45-504. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

The lien statutes of Idaho cover the services of a contractor in the reconstruction of a residence, for planning and directing the work incident thereto. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

The Supreme Court of Idaho has held that this statute grants the right to claim a lien for the value of the labor or material furnished and used in or about the construction, alteration or repair of the building, structure or other works. That right of lien is based on the theory that the claimant has, either by his labor or by the materials furnished and used, contributed to the construction or improvement of the property against which the lien is asserted; where the labor is not used or the materials are not incorporated into the building, structure or improvement, no lien on land or building results. *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 41 P.3d 242 (2001).

When a materialman delivers the material that was the subject of a lien to the site, the material is presumed to have been used in the project. *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 41 P.3d 242 (2001).

**Lienable Work.**



The lien statutes would not cover such work as checking over tools and the like, and, therefore, where the filing of the lien was not within the time provided by law for the filing of the same after terminating the work, unless such work be considered, although such work was performed within the time for the filing of the lien, it cannot serve to extend the time to file the lien. [Nelson v. Boise Petro. Corp., 54 Idaho 179, 32 P.2d 782 \(1934\).](#)

### **Lien Attempted Against Excess Property.**

The fact that a claim of lien embraces more property than is subject thereto does not work an invalidation of the lien, insofar as the property lawfully subject thereto is concerned, in the absence of fraud or bad faith. [White v. Constitution Min. & Milling Co., 56 Idaho 403, 55 P.2d 152 \(1936\).](#)

### **Lien Held Valid.**

The fact that the amount on a notice of claim and the amount prayed for in a foreclosure complaint differ was not enough to render a materialman lien invalid. [Barber v. Honorof, 116 Idaho 767, 780 P.2d 89 \(1989\).](#)

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the open account defense was inapplicable, (3) defendants remained in arrears on their debt to the builder, and (4) the lien was not destroyed by the fact that a lien building sat upon the land of a third person. [BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 \(2007\).](#)

### **Lien Prior to Attachment.**

Evidence was sufficient to support a finding that lien claimants were employed from a date certain to the termination of employment on a date subsequent to attachment levy, and that their claims were prior to such levy. [White v. Constitution Min. & Milling Co., 56 Idaho 403, 55 P.2d 152 \(1936\).](#)

### **Lien Right as Property.**

A materialman's lien right, as provided for by this section, is a valuable property right, the waiver of which could be held to be the obtaining

property under false pretenses. *State v. Davis*, 81 Idaho 61, 336 P.2d 692 (1959).

### **Lien Right for Materials Exists Without Attempt to Collect.**

A lumber company which furnished materials to be used in improving owners' dwelling could enforce lien against the building without first seeking payment for the materials from the original contractor. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Lien Under Sales Contract.**

Where contract of purchase stipulates that purchaser shall erect certain buildings or make certain improvements, lien will attach to and bind interest of vendor, even though vendee forfeits his contract. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928).

### **Materials Furnished but Not Used.**

Where there was sufficient competent evidence to sustain the court's finding that materials were furnished to be used in owners' building, materialman was not required, in order to enforce his lien against the building, to prove that the materials were used upon it. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

An absolute lien is granted upon improved property to persons who furnish material to be used in improving it. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Nature of Contract as Affecting Lien.**

Materialman who furnished material for erection of building under two separate contracts cannot tack one contract to the other by filing his claim of lien within required time from date of furnishing material pursuant to one of the contracts. *Valley Lbr. & Mfg. Co. v. Driessel*, 13 Idaho 662, 93 P. 765 (1907); *Mine & Smelter Supply Co. v. Idaho Consol. Mines Co.*, 20 Idaho 300, 118 P. 301 (1911).

Where materials are furnished for same building or improvement in instalments and at intervals, and parties intend them to be included in one account and settlement, the entire account will be treated as a continuous and connected transaction, and time in which to file lien begins to run from

the date of the last item of the account. *Valley Lbr. & Mfg. Co. v. Driessel*, 13 Idaho 662, 93 P. 765 (1907).

Contractor being only a special agent of owner, with limited power, his authority to bind property benefited for payment of value of material extends only to such material as is reasonably and ordinarily sufficient properly to construct or repair building in accordance with the plans and specifications thereof, or in pursuance of the agreement and contract entered into between owner and builder. *Valley Lbr. & Mfg. Co. v. Nickerson*, 13 Idaho 682, 93 P. 24 (1907).

Agency of contractor only authorizes purchase of, and creates lien for, materials reasonably necessary for buildings, building, or part of building embraced in single contract. *Boise Payette Lbr. Co. v. Felt*, 44 Idaho 377, 258 P. 169 (1927).

### **Nature of Lien.**

Mechanic's lien is wholly the creature of statute, and while the statutes must be construed liberally with a view to effecting their object and doing substantial justice, they must be taken as they are found. *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942 (D. Idaho 1913); *Continental & Com. Trust & Sav. Bank v. Pacific Coast Pipe Co.*, 222 F. 781 (9th Cir. 1915); *Phillips v. Salmon River Mining & Dev. Co.*, 9 Idaho 149, 72 P. 886 (1903); *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928); *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

Owner of building cannot be personally bound by the act of contractor under this section. Charge becomes one purely in rem and runs against the buildings or structure only. *Valley Lbr. & Mfg. Co. v. Nickerson*, 13 Idaho 682, 93 P. 24 (1907).

This statute is based on theory that whoever contributes labor or material whereby real property of another is enhanced in value shall be entitled to a lien upon the whole property in the sum due. Extent of lien when he comes to foreclose it must be measured by amount found due him on his contract at time of filing his lien. *Steltz v. Armory Co.*, 15 Idaho 551, 99 P. 98 (1908).

Materialman or laborer is given an absolute lien upon structure or improvement in which material was used or labor done, if he files his claim

within the time required by law. *Weeter Lbr. Co. v. Fales*, 20 Idaho 255, 118 P. 289 (1911).

Intention of parties with reference to the question of a lien, is immaterial and nonessential. Essential fact is: Was material furnished or labor performed, and if so, was it furnished or performed in manner and under terms and conditions designated by the statute? If so, party is entitled to lien as matter of law. *Mine & Smelter Supply Co. v. Idaho Consol. Mines Co.*, 20 Idaho 300, 118 P. 301 (1911).

Absolute lien is granted direct upon property, to person who performs labor upon or furnishes materials to be used in the building, structure or other improvement, without reference to whether such person is original contractor, subcontractor, laborer or materialman. *Hill v. Twin Falls Salmon River Land & Water Co.*, 22 Idaho 274, 125 P. 204 (1912).

It is intent of mechanics' lien law to grant absolute lien upon property to persons who perform labor or furnish material to be used in building or improving such structure. *McGill v. McAdoo*, 35 Idaho 283, 206 P. 1057 (1922); *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

This section creates two distinct types of liens — a lien against some form of structure, alternately referred to in later sections of the lien law as an “improvement,” and a lien created in favor of one who improves the land itself, by grading, leveling, and the like. A person making the first type of improvement “has a lien upon the same,” i.e., the improvement itself. On the other hand, a person who improves any land by grading, filling or leveling, obtains a lien against “the same,” i.e., the land. *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 264 P.3d 379 (2011).

### **Parol Negotiations Inadmissible.**

In an action to enforce lien, negotiations, resting in parol only, to eliminate part of a contract whereby the purchaser became the agent of the seller of mining property, were not admissible. *Hendrix v. Gold Ridge Mines, Inc.*, 56 Idaho 326, 54 P.2d 254 (1936).

### **Parties to Foreclosure Suit.**

Other lienors need not be made parties to suit to foreclose mechanic's lien unless plaintiff claims priority over their liens. *Continental & Com.*

Trust & Sav. Bank v. Corey Bros. Constr. Co., 208 F. 976 (9th Cir. 1913).

### **Presumptions.**

When there is a furnishing of materials in the sense of delivery, a rebuttable presumption arises that such materials were actually incorporated into the structure of improvement. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 587 P.2d 823 (1978).

### **Property Not Subject to Lien.**

An assignee of a materialmen's lien could not recover payment for paving a private drive in a development, because the property was not subject to the lien: the private drive was purchased before the developer of the land had contracted to have the paving done and there was no evidence that the developer, who hired the contractors to do the paving work, was acting as the purchaser's agent. *Intermountain Real Props., LLC v. Draw, LLC*, 155 Idaho 313, 311 P.3d 734 (2013).

### **Property Subject to Lien.**

Party constructing branch or section of a new canal or performing labor thereon in its construction under a contract with owner is entitled to lien upon such branch for any balance due him for such labor and need not claim lien on whole system of canals of which the branch is a part. *Creer v. Cache Valley Canal Co.*, 4 Idaho 280, 38 P. 653 (1894).

In order to entitle one to a lien for materials furnished, same must have been used on a particular building; there can be no lien for materials furnished under a general sale. *Colorado Iron Works v. Riekenberg*, 4 Idaho 705, 43 P. 681 (1896).

Term "mining claims," as used in this section, includes patented as well as unpatented mining ground. *Salisbury v. Lane*, 7 Idaho 370, 63 P. 383 (1900).

Where quartz mill is located upon and belongs to a mine and is worked as a part of same, laborer who works as amalgamator in mill and is employed generally in keeping machinery in order, is entitled to a lien on mine for labor which he performs. *Thompson v. Wise Boy Mining & Milling Co.*, 9 Idaho 363, 74 P. 958 (1903).

Where material is furnished contractor for work done on a city lot, under this section construed with § 45-504, lien therefor attaches to lot, as contractor is agent of owner. *Shaw v. Johnston*, 17 Idaho 676, 107 P. 399 (1910).

Fact that labor performed and material furnished for construction, alteration, and repair of any building, structure or other works was carried away by floods and high water without any fault of man who performed labor and furnished material does not deprive laboring man or materialman from preferring his lien under the statute and such lien attaching to the real estate on which work was done or improvement made. *Chamberlain v. Lewiston*, 23 Idaho 154, 129 P. 1069 (1912).

Town site is not the subject of a lien under this section. *Armitage v. Bernheim*, 32 Idaho 594, 187 P. 938 (1919).

This section must be construed in pari materia with § 45-505, providing that land on which building is constructed and convenient space about it is also subject to lien. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928).

It is universal rule, in absence of specific provision therefor, that general statutes granting mechanics' liens are not construed to include public buildings. *Boise-Payette Lumber Co. v. Challis Indep. Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928).

Lien is not destroyed by the fact that the liened buildings sit upon the land of a third person. *BMC West Corp. v. Horkley*, 144 Idaho 890, 174 P.3d 399 (2007).

### **Release of Liens.**

Trial court properly released liens of record where there was a failure of proof by lienholders to establish their liens. *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955).

### **Rental Charges.**

Where leased equipment was not incorporated into, or consumed and destroyed by, a construction project, the rental charge for the equipment could not serve as the basis for a mechanic's or materialman's lien. *Great*

Plains Equip., Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 979 P.2d 627 (1999).

### **Repair Parts.**

Suppliers of repair parts are not entitled to claim liens under this section. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 979 P.2d 627 (1999).

### **Rights of Subcontractor.**

Subcontractor can acquire no right under his lien that did not exist in original contractor, nor deprive water-right purchasers of their rights under their water contracts. Craig v. Smith, 33 Idaho 590, 196 P. 1038 (1921).

### **Statute, Knowledge of Not Essential.**

It is wholly unnecessary for a laborer to know anything about the terms of the statute when he begins the work in order to claim the benefit of the lien law. Hendrix v. Gold Ridge Mines, Inc., 56 Idaho 326, 54 P.2d 254 (1936).

### **Sufficiency of Complaint.**

Amendment of complaint, in contractor's lien action, to add cause of action for breach of contract was unnecessary since this section requires the work be done or materials furnished "at the instance of the owner of the building or other improvement or his agent" and the allegation of an express or implied contract is contained in the allegation of a mechanic's or materialman's lien in the original complaint. Mitchell v. Flandro, 95 Idaho 228, 506 P.2d 455 (1973).

### **Sufficiency of Description.**

Where a building is properly identified in the notice of claim of lien, a more general description of the land is sufficient, since the trial court has a reference point from which it may determine what land may be required for the convenient use of the building or structure; however, where there is no structure or one which has been inadequately identified, the notice of claim of lien must contain more particularized language in the description of the land in order to permit the court or interested third persons to identify the property against which the lien is asserted. Chief Indus., Inc. v. Schwendiman, 99 Idaho 682, 587 P.2d 823 (1978).



Where a materialman's notice of claim of lien failed to identify in any way that portion of the 160 acres upon which the building was to have been located and failed to identify in any way the portion of the 160 acres which constituted "a convenient space about the same, or so much as may be required for the convenient use and occupation thereof," the description of the real property in the notice of claim of lien was insufficient for identification of the property sought to be charged. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 587 P.2d 823 (1978).

### **Sufficiency of Evidence.**

Evidence was insufficient to justify judgment foreclosing the contractor's lien. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

Evidence sustained finding that, at special instance of contractor, lumber company furnished material for use in repairing owners' dwelling, as against contention that the materialman was principal, on whose behalf contractor acted, and was not entitled to benefit of materialmen's lien law for material furnished because of failure to complete the contract to repair. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

Workman is entitled to lien though he does not establish full amount of alleged claim. *Guyman v. Anderson*, 75 Idaho 294, 271 P.2d 1020 (1954).

Section 45-605 requiring claimant to establish full amount of claim in order to recover a penalty does not apply to suit to foreclose mechanic's lien, since lien is for security and is not a penalty. *Guyman v. Anderson*, 75 Idaho 294, 271 P.2d 1020 (1954).

### **Tenant Contracting for Work.**

Liens could not be foreclosed against tenant who contracted for material and labor where there was no proof that he had a tenant's interest in the real estate. *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955).

No lien was acquired against landlord's interest where the evidence showed that work, labor and material were furnished solely at the request of the tenant. *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955).

Where the "authorization" given by lessor for alterations to his property really amounted only to consent to have lessee expend approximately \$40,000 in remodeling effort, contractor never looked to nor relied upon



lessor for any part of the remodeling cost until after it had done the work and lessee had failed to pay for it, and lessee expected to exercise his option to purchase at a predetermined price which was consistent with the value of the premises and lots before the remodeling, it could be said that only the lessee expected to gain from the improvements, and the district court did not err in denying a lien against lessor's interest in the property. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

Where lease gave lessee the right to make improvements, but did not give any corresponding right to lessor to require any particular improvement, it could not be said as a matter of law that the work done and materials furnished were made "at the instance of" the lessor. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

### **Time Book Admissible in Evidence.**

A time book is admissible in evidence for whatever it may show respecting the number of hours of labor and number of men who worked upon a building sought to be subjected to the lien; and an objection that it does not show the contractor's time or material furnished is unavailing. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

### **Time for Filing.**

After substantial completion of building, lienor cannot extend time of lien by unreasonably or purposely delaying completion in some unimportant detail. *Gem State Lbr. Co. v. Witty*, 37 Idaho 489, 217 P. 1027 (1923).

Where time for filing lien would otherwise have lapsed and claimant relies upon delivery of additional material, it must not only be shown that material was actually used but was reasonably necessary to complete building according to terms of contract. *Gem State Lbr. Co. v. Witty*, 37 Idaho 489, 217 P. 1027 (1923).

### **Waiver of Lien.**

Intention to waive must clearly appear and will not be presumed or implied. *Smith v. Faris-Kesl Constr. Co.*, 27 Idaho 407, 150 P. 25 (1915).

Where a property owner secured a lien waiver from a subcontractor furnishing labor and materials for the construction of a dwelling and

consideration for subcontractor's execution of the lien waiver was the promise of payment in full, upon the failure of subcontractor to receive payment his purported waiver was of no effect. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

### **Who Entitled to Lien.**

Purpose of statute is to compensate anyone who performs labor upon, or furnishes, material to be used in construction, alteration, or repair of building or structure. *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

Although corporation is "a person" within statutory contemplation, it is not entitled to laborer's lien within meaning of this section. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Words "every person who shall perform labor" designate ordinary laborers who perform actual physical toil and do not include that higher and better paid class of employees whose duties are confined to superintendence and management, unless such class is expressly mentioned in statute. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Where a laborer is employed to be the superintendent and manager, in looking after, and taking care of, property and to plan, inspect and help with work when necessary, he and such labor come within the provisions of this section. *White v. Constitution Min. & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936).

In order to bring an action to collect compensation for work or labor performed and materials supplied in a construction project, the contractor must allege and prove that he was a duly registered contractor or exempt from registration at all times during the performance of such act or contract. *Parkwest Homes LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010).

### **Work Must Be Performed.**

During the time an employee held himself in readiness to perform labor, although he may recover therefor, he cannot file a lien within the time required by law where that is the last work performed, and, since it is unlienable, it cannot be considered in determining the time within which a lien must be filed. *Nelson v. Boise Petro. Corp.*, 54 Idaho 179, 32 P.2d 782 (1934).

If an employer desires to keep a laborer in his employ, regardless of whether he is performing labor all the time or not, he may do so, but he cannot escape liability to pay wages during the time work is not being done. But because the employee is not employed in the performance of labor, as contemplated by the statute, he is not entitled to a lien to secure his wages during the time he is idle. [Nelson v. Boise Petro. Corp., 54 Idaho 179, 32 P.2d 782 \(1934\).](#)

**Cited** [Salisbury v. Lane, 7 Idaho 370, 63 P. 383 \(1900\); Anderson v. Great N. Ry., 25 Idaho 433, 138 P. 127 \(1914\); In re Bank of Nampa, Ltd., 29 Idaho 166, 157 P. 1117 \(1916\); Scogings v. Andreason, 91 Idaho 176, 418 P.2d 273 \(1966\); Craig H. Hisaw, Inc. v. Bishop, 95 Idaho 145, 504 P.2d 818 \(1972\); Dale's Service Co. v. Jones, 96 Idaho 662, 534 P.2d 1102 \(1975\); Bastian v. Gafford, 98 Idaho 324, 563 P.2d 48 \(1977\); First Am. Title Co. v. Design Bldrs., Inc., 18 Bankr. 392 \(Bankr. D. Idaho 1981\); Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc., 108 Idaho 487, 700 P.2d 109 \(Ct. App. 1985\); Eimco Div. v. United Pac. Ins. Co., 109 Idaho 762, 710 P.2d 672 \(Ct. App. 1985\).](#)

## RESEARCH REFERENCES

**Idaho Law Review.** — Giving Mechanic's Lien Rights to Design Professionals in Idaho: The Logical Solution, Josh Sundloff. 49 Idaho L. Rev. 205 (2012).

**ALR.** — “Commencement of building or improvement” for purposes of determining accrual of lien, what constitutes. [1 A.L.R.3d 822.](#)

Charge for use of machinery, tools, or appliances used in construction as basis for mechanic's lien. [3 A.L.R.3d 573.](#)

Surveyor's work as giving rise to right to mechanic's lien. [35 A.L.R.3d 1391.](#)

Sufficiency of designation of owner in notice, claim, or statement of mechanic's lien. [48 A.L.R.3d 153.](#)

Labor in examination, repair, or servicing of fixtures, machinery, or attachments in building, as supporting a mechanic's lien or as extending time for filing such a lien. [51 A.L.R.3d 1087.](#)

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold. 59 A.L.R.3d 278.

Priorities as between previously perfected security interest and repairman's lien on motor vehicle under Uniform Commercial Code. 69 A.L.R.3d 1162.

Architect's services as within mechanics' lien statute. 31 A.L.R.5th 664.

Subjection of municipal property, or alleged municipal property, to mechanics' liens. 81 A.L.R.6th 363.

**§ 45-502, 45-503. Contracts for public works — Bond for protection of laborers and materialmen — Bond not provided — Allowance of claim unlawful. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

These sections, which comprised 1909, p. 165, §§ 1, 2; reen. C.L. §§ 5111a, 5111b; C.S., §§ 7341, 7342; am. 1929, ch. 254, § 1, p. 518; I.C.A., §§ 44-502, 44-503; am. 1933, ch. 164, § 1, p. 292, were repealed by S.L. 1965, ch. 28, § 7. For present comparable law, see §§ 54-1925 to 54-1930.

**§ 45-504. Lien for improving lots.** — Any person who, at the request of the owner of any lot in any incorporated city or town, surveys, grades, fills in, or otherwise improves the same, or who rents, leases or otherwise supplies equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#), to such person for the improvement of any lot, or the street in front of or adjoining the same, has a lien upon such lot for his work done or material furnished or equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#), rented, leased or otherwise supplied.

**History.**

1893, p. 49, ch. 1, § 3; reen. 1899, p. 147, ch. 1, § 3; reen. R.C. & C.L., § 5112; C.S., § 7343; I.C.A., § 44-504; am. 1971, ch. 91, § 2, p. 196; am. 2001, ch. 152, § 2, p. 550.

**CASE NOTES**

[Application.](#)

[Lienable items.](#)

[Lien under sales contract.](#)

[Request construed.](#)

**[Application.](#)**

If a contractor constructs sidewalk in front of city lot, on a street, he is, under § 45-501, to be deemed agent of owner, and under this section, a lien for materials furnished contractor attaches to the lot. [Shaw v. Johnston, 17 Idaho 676, 107 P. 399 \(1910\).](#)

Because a materialmen's lien claim arising from the provision of construction labor and materials for the development of a golf course was a lien upon the land as described in § 45-501 and this section, the designation requirement of § 45-508 did not apply. [Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC, 151 Idaho 740, 264 P.3d 379 \(2011\).](#)

**[Lienable Items.](#)**

Where contract calls for sewer construction in connection with certain houses, claim for labor and material furnished is lienable under this section. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

### **Lien Under Sales Contract.**

Work done on land for party holding contract for purchase thereof did not entitle person doing work to lien on land as against owner. *Parker v. Northwestern Inv. Co.*, 44 Idaho 68, 255 P. 307 (1927).

Where sewer construction was done at instance and request of vendee in possession, with knowledge of vendor, and subsequently vendee became owner by completing his contract, mechanic's lien attached in suit to foreclose lien. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

### **Request Construed.**

The phrase "at the request of the owner" in this section has the same meaning as the phrase "at the instance of the owner" in § 45-501. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985).

**§ 45-505. Land subject to lien.** — The land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the furnishing of professional services or other work, the furnishing of the material, or the renting, leasing or otherwise supplying of equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#), for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner, but if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.

### **History.**

1893, p. 49, ch. 1, § 4; reen. 1899, p. 147, ch. 1, § 4; reen. R.C. & C.L., § 5113; C.S., § 7344; I.C.A., § 44-505; am. 1971, ch. 91, § 3, p. 196; am. 2001, ch. 152, § 3, p. 550.

### **CASE NOTES**

Amount of land to be determined.

Application and construction.

Complaint need not allege amount of land.

Determination of necessary land.

Extent of lien.

Foreclosure of lien.

Lien held valid.

Lien under sales contract.

Property subject to lien.



Reliance on credit of the land.

Sufficiency of identification.

### **Amount of Land to be Determined.**

Under this section, it is necessary that the court determine the amount of land around the structure required for its convenient use and occupation and, therefore, subject to the lien; and where the court has so failed to do, the case will be remanded to the trial court with instructions to determine such amount of land and make proper findings. *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938); *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Application and Construction.**

Where one party makes improvements on land with consent of owner and under license from option holder on property, there can result no lien against such property in possession of original owner. *Boise Payette Lbr. Co. v. Bickel*, 42 Idaho 245, 245 P. 92 (1926).

One constructing buildings on land owned by another is bound to take notice of owner's record title, when it comes to enforcing his lien against property. *Boise Payette Lbr. Co. v. Bickel*, 42 Idaho 245, 245 P. 92 (1926).

This section must be construed in pari materia with § 45-501. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928).

### **Complaint Need Not Allege Amount of Land.**

In an action to enforce a contractor's lien, it is unnecessary for the complaint to plead the amount of land required for the convenient use and occupation of the property. *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds, *Dover Lumber Co. v. Case*, 31 Idaho 276, 170 P. 108 (1918); *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

### **Determination of Necessary Land.**

It is error for court in decreeing foreclosure of mechanic's lien to fail to find amount of land necessary for the convenient use of the property to be sold. *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds, *Dover Lumber Co. v. Case*, 31 Idaho 276, 170 P. 108 (1918); *Dybvig v. Willis*, 59 Idaho 160, 82 P.2d 95 (1938).

Judgment of foreclosure was not sustained by evidence where findings of fact were based upon a surveyor's report as to the amount of land necessary for convenient use of the barn but no testimony of the surveyor was taken at the trial in action brought by contractor for lien on barn, under this section ordering determination of land necessary for use and occupation of building. [Mackey v. Eva](#), 80 Idaho 260, 328 P.2d 66 (1958).

In an action to foreclose a mechanic's lien for drilling a well, where defendant testified that he planned to use the water from the well for culinary use only and there was evidence that he planned to use it to irrigate his entire tract of ground, it was not error for the court to find that the entire tract was required for the convenient use and occupation of the well. [Durfee v. Parker](#), 90 Idaho 118, 410 P.2d 962 (1965).

Where the court found work had been performed on 200 acres of land, indicating that the land had been benefited as a farming unit, the extent of the lien foreclosures on that land was not too broad in that the court failed to find what portion of the land was benefited. [Weber v. Eastern Idaho Packing Corp.](#), 94 Idaho 694, 496 P.2d 693 (1972).

Where a building is properly identified in the notice of claim of lien, a more general description of the land is sufficient, since the trial court has a reference point from which it may determine what land may be required for the convenient use of the building or structure; however, where there is no structure or one which has been inadequately identified, the notice of claim of lien must contain more particularized language in the description of the land in order to permit the court or interested third persons to identify the property against which the lien is asserted. [Chief Indus., Inc. v. Schwendiman](#), 99 Idaho 682, 587 P.2d 823 (1978).

### **Extent of Lien.**

Lien may be foreclosed against interest in real property less than that of fee simple title, as whatever interest debtor may have in property may be foreclosed in action brought for that purpose. [Nelson Bennett Co. v. Twin Falls Land & Water Co.](#), 14 Idaho 5, 93 P. 789 (1908); [Naylor v. Lewiston & S.E. Elec. Ry.](#), 14 Idaho 789, 96 P. 573 (1908).

Lien is not destroyed by the fact that the lien buildings sit upon the land of a third person. [BMC West Corp. v. Horkley](#), 144 Idaho 890, 174

P.3d 399 (2007).

### **Foreclosure of Lien.**

Materialman's lien cannot be foreclosed on land when there is no structure on land for which material was furnished. *Karlson v. National Park Lbr. Co.*, 46 Idaho 595, 269 P. 591 (1928).

Judgment in action to foreclose materialman's lien must determine location and ownership of building, and defendants in such action are estopped from thereafter making any claim to building on theory that location was other than that described in judgment. *Karlson v. National Park Lbr. Co.*, 46 Idaho 595, 269 P. 591 (1928).

Under the provisions of this statute, the court is required to determine the amount of land required for convenient use and occupation of the property to be sold and this cannot be extended to reach realty afterwards acquired by the defendant unless so determined by the court. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

In mechanic's lien foreclosure where two judgment claimants assigned their judgments to another judgment claimant and heirs of deceased owner assigned their interest to same assignee so as to cause a merger of the liens with the title, an unassigned recorded judgment of another claimant is a cloud on the title which must be removed to render same marketable. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

The statutory provision that judgments become liens on all property judgment debtor has at the time of rendition or that he may thereafter acquire is not applicable to judgment foreclosing mechanics' lien. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

### **Lien Held Valid.**

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the open account defense was inapplicable, (3) defendants remained in arrears on their debt to the builder, and (4) the lien was not destroyed by the fact that a liened building sat upon the land of a third person. *BMC West Corp. v. Horkley*, 144 Idaho 890, 174 P.3d 399 (2007).

### **Lien Under Sales Contract.**

Where contract of sale required construction of building by vendee, not only buildings, but vendor's interest in land, was subject to lien. *Boise Payette Lumber Co. v. Sharp*, 45 Idaho 611, 264 P. 665 (1928).

If vendee has not completed his purchase, lien attaches only to vendee's interest. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

Judgment rendered on complaint alleging that materials were furnished to vendee under sales contract for construction of buildings on premises, with the knowledge and consent of vendor, was not subject to collateral attack. *United States Nat. Bank v. Humphrey*, 49 Idaho 363, 288 P. 416 (1930).

### **Property Subject to Lien.**

Townsite is not the subject of a lien under this section. *Armitage v. Bernheim*, 32 Idaho 594, 187 P. 938 (1919).

The land upon which a lien may be asserted is expressly referenced to and made dependent upon the location of the building, structure or improvement; therefore, a lien may not be acquired against the land if one cannot be acquired against the building, structure or other improvement. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 587 P.2d 823 (1978).

A claim of lien is not invalid simply because it describes more property than is properly subject to the lien; so long as there is no fraudulent intent on the part of the lien claimant and no one is injured by the overly broad property description, the land properly subject to the lien is for the court to determine, after hearing all the evidence. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

### **Reliance on Credit of the Land.**

To obtain a lien against the land upon which the improvement is constructed, the lien claimant must have relied upon the credit of the land for payment and not merely on the personal credit of the purchaser. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

### **Sufficiency of Identification.**

Where a materialman's notice of claim of lien failed to identify in any way that portion of the 160 acres upon which the building was to have been located and failed to identify in any way the portion of the 160 acres which constituted "a convenient space about the same, or so much as may be required for the convenient use and occupation thereof," the description of the real property in the notice of claim of lien was insufficient for identification of the property sought to be charged. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 587 P.2d 823 (1978).

**Cited** *Creer v. Cache Valley Canal Co.*, 4 Idaho 280, 38 P. 653 (1894); *Steel v. Argentine Mining Co.*, 4 Idaho 505, 42 P. 585 (1895); *Weeter Lbr. Co. v. Fales*, 20 Idaho 255, 118 P. 289 (1911); *Nicholson v. Smith*, 31 Idaho 544, 174 P. 1008 (1918); *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984); *Bouten Constr. Co. v. H.F. Magnuson Co.*, 133 Idaho 756, 992 P.2d 751 (1999).

## RESEARCH REFERENCES

**Idaho Law Review.** — Giving Mechanic's Lien Rights to Design Professionals in Idaho: The Logical Solution, Josh Sundloff. 49 Idaho L. Rev. 205 (2012).

**ALR.** — Effect on purchaser's interest of mechanics' lien for labor or material furnished under a contract with the vendor pending an executory contract for sale of the property. 50 A.L.R.3d 944.

Enforceability of single mechanic's lien upon several parcels against less than the entire property lien. 68 A.L.R.3d 1300.

**§ 45-506. Liens preferred claims.** — The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished; also to any lien, mortgage, or other encumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished.

**History.**

1893, p. 49, ch. 1, § 5; reen. 1899, p. 147, ch. 1, § 5; reen. R.C. & C.L., § 5114; C.S., § 7345; I.C.A., § 44-506; am. 1971, ch. 91, § 4, p. 196; am. 2001, ch. 152, § 4, p. 550.

**CASE NOTES**

Commencement of lien.

Lien superior to attachment.

Liberal construction.

Priorities.

Time lien attaches.

**Commencement of Lien.**

This section, in conjunction with § 45-501, covers liens from the beginning of work and the furnishing of materials. *White v. Constitution Min. & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936).

**Lien Superior to Attachment.**

Evidence was sufficient to support a finding that lien claimants were employed from a date certain to the termination of the work on a date subsequent to attachment levy, and that their claims were prior to such levy. *White v. Constitution Min. & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936).

### **Liberal Construction.**

Statutes governing mechanic's and laborer's liens are to be liberally construed so as to effect their objects and to promote justice. *Metropolitan Life Ins. Co. v. First Security Bank*, 94 Idaho 489, 491 P.2d 1261 (1971).

### **Priorities.**

Where owner of property, after entering into a contract for construction of certain irrigation works thereon, executes a trust deed to property, securing bonds to raise funds wherewith to meet the obligation of the contract, work upon which had already been commenced, mechanic's lien claimed by such contractor is superior in rank to trust deeds securing bonds, and there is no estoppel from claiming such priority where construction company has done nothing to lead bondholders to believe that their lien should be first. *Continental & Com. Trust & Sav. Bank v. Corey Bros. Constr. Co.*, 208 F. 976 (9th Cir. 1913).

All liens for labor commenced and materials commenced to be furnished prior to recording of mortgages or other liens are prior and superior liens to said mortgages or liens and the liens of all laborers for labor commenced, and materialmen for material commenced to be furnished, subsequent to the recording of said mortgages, are subordinate to said mortgages, when such work is done and material furnished by persons not theretofore connected with the construction of the building. *Boise-Payette Lumber Co. v. Halloran-Judge Trust Co.*, 281 F. 818 (9th Cir. 1922); *Pacific States Sav. Loan & Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905).

Mortgage lien, referring to subsequently acquired property, is subject to mechanics' and materialmen's liens for construction and acquiring of such property. *Pacific Coast Pipe Co. v. Blaine County Irrigation Co.*, 32 Idaho 705, 187 P. 940 (1920).

If mechanic who worked on section of irrigation system elects to file his lien on entire system, it thereby becomes subject to prior mortgage thereon.



*Pacific Coast Pipe Co. v. Blaine County Irrigation Co.*, 32 Idaho 705, 187 P. 940 (1920).

Where lien claimant had no notice of mortgage at time labor and material were furnished, and where such mortgage was unrecorded, lien is entitled to superiority. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

It is well settled that the liens of employee's debt, judgment or other encumbrances, including attachment, created subsequent to the time when the labor lien attaches, or subsequent to the time to which the labor lien relates, are inferior to the labor liens. *White v. Constitution Min. & Milling Co.*, 56 Idaho 403, 55 P.2d 152 (1936).

A mortgage lien in the hands of an assignee takes precedence over a mechanic's lien which attached prior to the assignment but subsequent to the execution of the mortgage. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

Furnishers of material were entitled to relief on basis of cross-complaints where they alleged that bank holding a mortgage on housing project induced cross-complainants not to file their liens for material furnished and it was alleged that cross-complainants had started delivery of material before execution of mortgage, therefore bank profited thereby and cross-complainants were injured as result of reliance upon false statements by bank. *Cooper v. Wesco Builders, Inc.*, 73 Idaho 383, 253 P.2d 226 (1953).

Where the materials involved in the lien were furnished from Feb. 21, 1959, through July 16, 1959, and the mortgage involved was executed, filed and recorded on March 12, 1959, the lien filed against the property on Sept. 15, 1959, was, at the time of its filing, entitled to priority over the mortgage. *Palmer v. Bradford*, 86 Idaho 395, 388 P.2d 96 (1963).

Mechanics' and materialmen's lien was not "choate" and thus did not have priority over federal farmers home administration mortgage where mechanics' lien was not the first filed, was uncertain as to amount and was subject to dissolution if not timely filed and enforced. *Jones v. Lickley*, 453 F. Supp. 44 (D. Idaho 1978).

Using this section and § 45-512 as the mechanism to set the priority of plaintiff's mechanics lien as against the mortgage liens of the trusts, the district court's review of the mortgage lien on the property held by the trusts



was proper. *Bouten Constr. Co. v. H.F. Magnuson Co.*, 133 Idaho 756, 992 P.2d 751 (1999).

Lien priority depends upon time that labor was commenced or materials were furnished by the claimant. *Ultrawall, Inc. v. Washington Mut. Bank*, 135 Idaho 832, 25 P.3d 855 (2001).

Financial lender's mortgages had priority over a landscape developer's mechanics lien, because the developer's priority date did not relate back to before the mortgages. *Credit Suisse Ag v. Teufel Nursery, Inc.*, 156 Idaho 189, 321 P.3d 739 (2014).

### **Time Lien Attaches.**

Lien of subcontractor, with respect to priority over mortgage, held to date back to time subcontractor began work and not to time principal contractor entered into contract. *Boise-Payette Lumber Co. v. Halloran-Judge Trust Co.*, 281 F. 818 (9th Cir. 1922).

Lien for materials and supplies furnished in construction, alteration, or repair of buildings or mining structures or improvements relates back to date of commencing to furnish materials therefor. *Mine & Smelter Supply Co. v. Idaho Consol. Mines Co.*, 20 Idaho 300, 118 P. 301 (1911).

The effective date of labor and materialmen's liens is the date of commencement of the work or improvement or commencing to furnish material. *Metropolitan Life Ins. Co. v. First Security Bank*, 94 Idaho 489, 491 P.2d 1261 (1971).

The priority date of a lien for materials is the date materials were commenced to be furnished; although the claim of lien is usually filed after all the materials have been furnished, the lien relates back to the date on which materials were first furnished by the claimant. The general rule is that such a lien does not attach unless and until the delivery of construction materials to the site. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

**Cited** *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942 (D. Idaho 1913); *Continental & Com. Trust & Sav. Bank v. Pacific Coast Pipe Co.*, 222 F. 781 (9th Cir. 1915); *First Am. Title Co. v. Design Bldrs., Inc.*, 18 Bankr. 392 (Bankr. D. Idaho 1981).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Giving Mechanic's Lien Rights to Design Professionals in Idaho: The Logical Solution, Josh Sundloff. 49 Idaho L. Rev. 205 (2012).

**§ 45-507. Claim of lien.** — (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated.

(2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(3) The claim shall contain:

(a) A statement of his demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom he was employed or to whom he furnished the materials; and

(d) A description of the property to be charged with the lien, sufficient for identification.

(4) Such claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.

(5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.

(6) For purposes of this chapter, owner or reputed owner does not include a trustee of a deed of trust as defined and required by section 45-1502 et seq., Idaho Code.

### **History.**

1893, p. 49, ch. 1, § 6; am. 1895, p. 48, ch. 1, § 6; reen. 1899, p. 147, ch. 1, § 6; reen. R.C. & C.L., § 5115; C.S., § 7346; I.C.A., § 44-507; am. 1971, ch. 91, § 5, p. 196; am. 1983, ch. 127, § 1, p. 323; am. 1993, ch. 378, § 1, p. 1386; am. 2001, ch. 152, § 5, p. 550; am. 2002, ch. 307, § 1, p. 876; am. 2015, ch. 339, § 1, p. 1271.

## STATUTORY NOTES

### **Amendments.**

The 2015 amendment, by ch. 339, added subsection (6).

## CASE NOTES

Acknowledgement.

Amount of claim.

Attached property.

Award of costs.

Discrepancy in claim.

Estoppel of claimant.

Filing not a taking.

Incorrect property description.

Liberal construction.

Lien waivers.

Proof of claim.

Sufficiency of description.

Sufficiency of notice.

Time for filing.

Timely amending of claim.

Verification of claim.

Work must be performed.

### **Acknowledgement.**

Claims of mechanics' and materialmen's liens filed under this chapter must be acknowledged in accord with § 55-805 before they are entitled to be recorded, and the "verification" required under this section does not serve the same purpose or function of an "acknowledgement" and cannot be

a substitute therefor; accordingly, liens that were not acknowledged, or acknowledged but where the certificate of acknowledgement did not substantially comply with Title 55, [Chapter 7 of the Idaho Code](#), were not enforceable against the bankruptcy trustee. [Kloos v. Jacobson](#), 30 Bankr. 965 (Bankr. D. Idaho 1983).

Laborers and materialmen have the right to assert and obtain a lien which need not include an acknowledgement for it to be properly recorded against the property upon which they have performed labor or for which they have furnished materials. [A-J Corp. v. GVR Ltd.](#), 107 Idaho 1101, 695 P.2d 1240 (1985).

Where contractor's mechanic's lien stated only that he appeared, was duly sworn, and stated the contents of the lien, the lien did not satisfy the statutory requirements, and it was therefore invalid. [Cornerstone Bldrs., Inc. v. McReynolds](#), 136 Idaho 843, 41 P.3d 271 (Ct. App. 2001).

### **[Amount of Claim.](#)**

Every person performing labor or furnishing material for building or structure is entitled to a lien therefor, and amount to be recovered under such lien is always measured by amount found to be due him under his contract. [Steltz v. Armory Co.](#), 15 Idaho 551, 99 P. 98 (1908).

### **[Attached Property.](#)**

Although the majority of work done was not located on the actual parcel of land for which a mechanic's lien was sought, the lien could properly be maintained where the work was done upon the easement attached to the parcel. [Fairfax v. Ramirez](#), 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

### **[Award of Costs.](#)**

When a party successfully forecloses on a lien filed pursuant to this section, that party is entitled to an award of the costs associated with the foreclosure pursuant to § 45-513. [Olsen v. Rowe](#), 125 Idaho 686, 873 P.2d 1340 (Ct. App. 1994).

Upon the successful entry of a judgment of foreclosure of a lien claimed under this section, an award of attorney fees and costs is mandatory. The amount of the award, however, is still a matter of discretion for the district court. In determining the amount, the district court is free to consider the

factors of [Idaho R. Civ. P. 54\(e\)\(3\)](#) as well as those considerations which are part of a prevailing party analysis under [Idaho R. Civ. P. 54\(d\)\(1\)\(B\)](#). [Olsen v. Rowe](#), 125 Idaho 686, 873 P.2d 1340 (Ct. App. 1994).

### **Discrepancy in Claim.**

A lien is not invalidated simply because the claimant is not entitled to the amount claimed due in the claim of lien, even when the discrepancy is substantial. And, if an error in the amount of the claim does not invalidate the lien, it would be incongruous to read into subsection (3) a provision invalidating the lien if the claimant does not state that all just credits and offsets had been deducted when calculating the amount of the demand. [Parkwest Homes LLC v. Barnson](#), 149 Idaho 603, 238 P.3d 203 (2010).

### **Estoppel of Claimant.**

Where claimant furnishing labor and materials makes owner of building garnishee in action against contractor, and states in answering garnishee's answer that it has no lien, and garnishee in reliance thereon pays out money it might have retained to satisfy claimant's lien, claimant is estopped to assert lien. [H. W. Johns-Manville Co. v. Allen](#), 37 Idaho 153, 215 P. 840 (1923).

### **Filing Not a Taking.**

The filing of a lien under this chapter is not a violation of due process since there is no taking of a significant property interest. [Kloos v. Jacobson](#), 30 Bankr. 965 (Bankr. D. Idaho 1983).

### **Incorrect Property Description.**

Where the real property description in a mechanic's lien claim notice is "unambiguously erroneous" and describes with exactitude the wrong parcel of real property, substantial compliance with the statute is not achieved and the claim of lien is invalidated. [Ross v. Olson](#), 95 Idaho 915, 523 P.2d 518 (1974).

If the notice of claim of lien has a fatally defective description, there can be no valid lien and no foreclosure proceeding may be based on that notice of claim. [Chief Indus., Inc. v. Schwendiman](#), 99 Idaho 682, 587 P.2d 823 (1978).

A claim of lien is not invalid simply because it describes more property than is properly subject to the lien; so long as there is no fraudulent intent on the part of the lien claimant and no one is injured by the overly broad property description, the land properly subject to the lien is for the court to determine, after hearing all the evidence. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

### **Liberal Construction.**

Since the purpose of this section is to compensate persons who perform labor upon or furnish materials to be used in the construction, alteration, or repair of a building or structure, this section will be liberally construed but the statutory requirements must be substantially complied with in order to perfect a valid mechanic's lien. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

The mechanic's lien statutes are liberally construed in favor of those to whom the lien is granted. To create a valid lien, the claimant must substantially comply with the statutory requirements. *Parkwest Homes LLC v. Barnson*, 149 Idaho 603, 238 P.3d 203 (2010).

### **Lien Waivers.**

In action involving contract dispute which arose from a remodeling project performed on a residential home by plaintiffs for defendants, lien waiver signed on June 17, 1992, applied only to claims of plaintiffs as of June 17, 1992, since it was found that substantial performance was not completed until June 22, the waiver did not extend to release defendants of any material and labor claims alleged by plaintiffs subsequent to June 17. *Baker v. Boren*, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997).

In action involving contract dispute which arose from a remodeling project that plaintiffs performed on residential property for defendants, lien waiver signed by plaintiffs and defendants did not hold defendants harmless from claims of subcontractors where remodeling project differed from other projects performed by plaintiffs for defendant in that in this project plaintiffs did not control or direct the subcontractors as they had in the past and defendants dealt directly with the subcontractors in that they paid several of these contractors directly and directed their work. *Baker v. Boren*, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997).

### **Proof of Claim.**

Rendering of account for labor performed and material furnished for work upon a railroad right of way, which account is accepted and approved by railway company, is sufficient proof of the performance of such labor and furnishing of material used in the construction of such improvement, and authorizes the filing of lien therefor. *Naylor v. Lewiston & S.E. Elec. Ry.*, 14 Idaho 789, 96 P. 573 (1908).

### **Sufficiency of Description.**

Description is sufficient where property can be identified by it. *Shaw v. Martin*, 20 Idaho 168, 117 P. 853 (1911).

Where there was more than one building on lot, claim of lien against building on such lot, but not pointing out which building, is insufficient. *Gem State Lbr. Co. v. Cameron*, 44 Idaho 595, 258 P. 539 (1927).

Where a materialman's notice of claim of lien mentioned the materials supplied in general terms, but at no point did it specifically claim a lien against the materials or describe them adequately for identification, no lien could be sustained against the materials. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 587 P.2d 823 (1978).

If there appears enough in the description of the property to be charged with the lien to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty, to the exclusion of others, it will be sufficient. *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984).

Property descriptions contained in liens, which were from two different people familiar with the locality who were able to identify the property with reasonable certainty, constituted substantial compliance with this section. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

### **Sufficiency of Notice.**

Notice of lien must contain a direct and unequivocal allegation of name of owner; a notice headed "A and B, subcontractors and claimants, v. C,



contractor, and D, owner,” is insufficient. *White v. Mullins*, 3 Idaho 434, 31 P. 801 (1892).

Notice of claim of lien for construction of canal which states that a certain company is name of owner and is reputed owner of premises therein described, and caused the said canal to be constructed and excavated, is sufficient. *Creer v. Cache Valley Canal Co.*, 4 Idaho 280, 38 P. 653 (1894).

Mechanic’s lien for construction of canal need not charge or claim lien upon land or right of way. *Creer v. Cache Valley Canal Co.*, 4 Idaho 280, 38 P. 653 (1894).

Statement in lien notice that work was performed and materials furnished upon a certain mining claim, “the property of the defendant,” is not a sufficient compliance with this section. *Steel v. Argentine Mining Co.*, 4 Idaho 505, 42 P. 585 (1895).

Where work is done upon a group of placer mining claims owned by the same person and commonly known under the same name, description of claims under such common name, together with description of place of location, is sufficient in a notice of lien. *Phillips v. Salmon River Mining & Dev. Co.*, 9 Idaho 149, 72 P. 886 (1903).

Notice of lien should contain statement of demand, name of owner or reputed owner, if known, name of person by whom employed, description of property and must be verified. *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds, *Dover Lumber Co. v. Case*, 31 Idaho 276, 170 P. 108 (1918).

Claim of lien containing no recital of name of owner or person by whom laborer was employed, except recital that certain person was owner or reputed owner of premises, and “caused said labor” is insufficient. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Claimant’s failure to name the wife as well as the husband in its claim did not invalidate its lien against community real property. A substantial compliance in good faith meets the statutory requirement. *Layrite Prods. Co. v. Lux*, 86 Idaho 477, 388 P.2d 105 (1964).

**Time for Filing.**

Fact that it was not shown that claimant had ceased to perform his duties at time of filing of his claim for lien did not invalidate his claim. *Idaho Mining & Milling Co. v. Davis*, 123 F. 396 (9th Cir. 1903).

Materialman, who contracts direct with owner and has no privity of interest or contract with contractor, is an original contractor and entitled to time given to such contractors within which to file his lien. *Colorado Iron Works v. Riekenberg*, 4 Idaho 262, 38 P. 651 (1894).

Time for filing lien cannot be extended by furnishing on a new contract or requesting additional articles and adding them to a completed account and statement of material furnished. *Valley Lbr. & Mfg. Co. v. Driessel*, 13 Idaho 662, 93 P. 765 (1907).

Materialman or laborer is given an absolute lien upon structure or improvement in which material was used or labor done if he files his claim of lien within time required by law, and payment by owner of the full contract price to contractor prior to date of filing of lien is no defense in action to foreclose such lien. *Weeter Lbr. Co. v. Fales*, 20 Idaho 255, 118 P. 289 (1911).

Ordinarily furnishing article or performing service, trivial in character, is not sufficient to extend time for claiming lien, or revive expired lien, where article or service are available after substantial completion of contract, and article is not expressly required by terms thereof. *H. W. Johns-Manville Co. v. Allen*, 37 Idaho 153, 215 P. 840 (1923); *Gem State Lbr. Co. v. Witty*, 37 Idaho 489, 217 P. 1027 (1923).

Lien of subcontractor must be filed within sixty [now ninety] days from date of completion of building or date of furnishing last item of material. *H. W. Johns-Manville Co. v. Allen*, 37 Idaho 153, 215 P. 840 (1923); *Gem State Lbr. Co. v. Witty*, 37 Idaho 489, 217 P. 1027 (1923).

Notice of claim of well driller's lien was held to be timely filed where notice was filed within 90 days of the sealing and capping of a completed well as the work of such sealing and capping was held not to be so minor or trivial as to be insufficient to extend the time within which to file a lien under this section. *Craig H. Hisaw, Inc. v. Bishop*, 95 Idaho 145, 504 P.2d 818 (1972).

Trivial work done or materials furnished after a construction contract has been substantially completed will not extend the time in which a lien claim can be filed under this section. *Mitchell v. Flandro*, 95 Idaho 228, 506 P.2d 455 (1973).

Where evidence established that construction contract was substantially completed on November 10, 1964 and trial court found inadequate proof that any material or substantial work was performed or supplies furnished after that date which would extend the time for filing a mechanic's lien, trial court correctly held that lien filed March 11, 1965 was not timely. *Mitchell v. Flandro*, 95 Idaho 228, 506 P.2d 455 (1973).

Since the sixty-day [now ninety-day] period provided by this section for the filing of mechanics' liens cannot be extended or revised by the furnishing of trivial labor or material once the contract has been completed, a lien claimant must show that any additional materials or labor were actually used in constructing or repairing the structure and that they were necessary to complete construction according to terms of the contract. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

The time for filing a lien is not extended by performing a service, nor by furnishing an article, that is trivial in character, but remedying a defect in work or materials, at demand of a public inspector, will extend the time to file a lien. *Barlow's, Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

In considering the timeliness of a lien filed by electrical subcontractor, the fact that property owner did not request final work performed at direction of the state electrical inspector was not dispositive, as the issue is not what the property owner requested, but whether the work in question was unnecessary or trivial. *Barlow's, Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

The time for filing a lien starts to run when the claimant performs his last substantial work or makes his last substantial delivery of materials. *Barlow's, Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

In action involving a contract dispute which arose from a remodeling project that plaintiffs performed on residential home for defendants, lien

filed August 20, 1992 was valid where there was substantial evidence that work performed between June 18 and 22nd was a substantial continuation of the work on the contract on which work was begun in March of 1992, where evidence showed that the work done between June 17 and June 22 was in furtherance of the existing contract and even though the work was not completed in 90 days as projects the parties had worked on in the past were generally completed, plaintiffs worked consistently from the time they undertook the project through June 22 and it was not a situation in which materials and services were rendered minimally in an attempt to prolong the filing date of the claim of lien. [Baker v. Boren, 129 Idaho 885, 934 P.2d 951 \(Ct. App. 1997\)](#).

Building supplier's materialman's lien was timely where it was filed within 90 days of a contractor's last order; strict materialmen, such as the building supplier, differed from builders who only furnished labor or labor and materials when analyzing substantial completion of contract under this section. [Franklin Bldg. Supply Co. v. Sumpter, 139 Idaho 846, 87 P.3d 955 \(2004\)](#).

Where a builder bought materials from a supplier to use on defendants' building project, the supplier was entitled to a lien on the buildings that the project produced because, inter alia, (1) the supplier did not receive full payment for the materials the supplier furnished for the construction of the project, (2) the lien was timely filed since an insulated storage building qualified as an "improvement" on the land, and (3) the verification of the supplier's agent was not defective since the agent's type-written name was sufficient. [BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 \(2007\)](#).

### **Timely Amending of Claim.**

Since an original contractor must file a claim of lien no later than ninety days after the completion of the improvement, in the absence of statutory authorization, a defective claim of lien may not be amended after the statutory period for filing the claim has expired and although amendment of the complaint was permissible under the provisions of [Idaho R. Civ. P. 15\(b\)](#), such amendment could not remedy the fatal defect in the claim of lien based on an improvement completed a year previously. [Ross v. Olson, 95 Idaho 915, 523 P.2d 518 \(1974\)](#).

## **Verification of Claim.**

The insertion of the legal description of the property involved by claimant's attorney, done on the written instructions of claimant, before filing for record but after the verification by claimant, did not violate the verification requirement of the statute where the claim of lien as filed for record complied with the statute. [Layrite Prods. Co. v. Lux](#), 86 Idaho 477, 388 P.2d 105 (1964).

Where the certificate of the president of the laborer materialman company recited that an oath had been administered and stated that the claim was believed to be true and just, and the notary public's certificate attached thereto contained not merely a corporate acknowledgment but also a statement that the corporation's president "did subscribe and swear to" the lien claim before the notary, the certificates, taken together, constituted a verification and satisfied the requirement of this section. [Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.](#), 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984).

Verification by oath of the claimant, that his claim is "true", rather than "just", is not a material difference. [Parkwest Homes LLC v. Barnson](#), 149 Idaho 603, 238 P.3d 203 (2010).

Claimant's agent's signature before a notary is sufficient verification of the claim, even though it does not meet the exact form of a written oath set forth in § 51-109(2). [Parkwest Homes LLC v. Barnson](#), 149 Idaho 603, 238 P.3d 203 (2010).

Mechanic's lien was invalid as a matter of law under this section, because, while a notary public acknowledged the lien, the notary did not certify that the person signing the lien had been sworn before the notary. [First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc.](#), 154 Idaho 626, 301 P.3d 632 (2012).

## **Work Must Be Performed.**

During the time an employee held himself in readiness to perform labor, although he may recover therefor, he cannot file a lien within the time required by law where that is the last work performed, and since it is unlienable, it cannot be considered in determining the time within which a

lien must be filed. *Nelson v. Boise Petro. Corp.*, 54 Idaho 179, 32 P.2d 782 (1934).

**Cited** *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942 (D. Idaho 1913); *Continental & Com. Trust & Sav. Bank v. Pacific Coast Pipe Co.*, 222 F. 781 (9th Cir. 1915); *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925); *Boise-Payette Lumber Co. v. Challis Indep. Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928); *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955); *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956); *Jones v. Lickley*, 453 F. Supp. 44 (D. Idaho 1978); *First Am. Title Co. v. Design Bldrs., Inc.*, 18 Bankr. 392 (Bankr. D. Idaho 1981); *W.F. Constr. Co. v. Kalik*, 103 Idaho 713, 652 P.2d 661 (Ct. App. 1982); *Bonner Bldg. Supply, Inc. v. Standard Forest Prods., Inc.*, 106 Idaho 682, 682 P.2d 635 (Ct. App. 1984); *Weaver v. Millard*, 120 Idaho 692, 819 P.2d 110 (Ct. App. 1991); *In re Hyatt*, 2011 Bankr. LEXIS 5055 (Bankr. D. Idaho Dec. 21, 2011).

## RESEARCH REFERENCES

**Idaho Law Review.** — Giving Mechanic's Lien Rights to Design Professionals in Idaho: The Logical Solution, Josh Sundloff. 49 Idaho L. Rev. 205 (2012).

**ALR.** — Abandonment of construction or of contract as affecting time for filing mechanics' liens or time for giving notice to owner. 52 A.L.R.3d 797.

Subjection of municipal property, or alleged municipal property, to mechanics' liens. 81 A.L.R.6th 363.

**§ 45-508. Claims against two buildings.** — In every case in which one (1) claim is filed against two (2) or more buildings, mines, mining claims, or other improvements, owned by the same person, the person filing such claim must, at the same time, designate the amount due him on each of said buildings, mines, mining claims, or other improvement; otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage, or otherwise, upon either of such buildings, or other improvements, or upon the land upon which the same are situated.

**History.**

1893, p. 49, ch. 1, § 7; reen. 1899, p. 147, ch. 1, § 7; reen. C.L., § 5116; C.S., § 7347; I.C.A., § 44-508.

**CASE NOTES**

Construction.

Designation.

Filing blanket liens.

**Construction.**

All work on a single project, for a single owner, and under a single contract is to be treated as a single improvement. *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 264 P.3d 379 (2011).

**Designation.**

Because a materialmen's lien claim arising from the provision of construction labor and materials for the development of a golf course was a lien upon the land as described in §§ 45-501 and 45-504, the designation requirement of this section did not apply; thus, noncompliance with the section cannot cause a loss of priority. *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 264 P.3d 379 (2011).

**Filing Blanket Liens.**



Where several claims and locations were owned and operated as one mine, as against parties so uniting them, they would be treated as single claim, and hence lien for services was not ineffective for failure to describe particular claim relative to which the services were rendered. *Idaho Mining & Milling Co. v. Davis*, 123 F. 396 (9th Cir. 1903).

Where company owns three mining claims and lien is filed against all of them without specifying amount due on each, such lien is postponed to other liens but is not void. *Phillips v. Salmon River Mining & Dev. Co.*, 9 Idaho 149, 72 P. 886 (1903).

When a lien claimant fails to specify the amount claimed against each of several buildings, the claim is not thereby rendered void; rather, the lien is postponed to other liens. *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984).

It would exalt form over substance to hold that a notice of a materialman plumber's claim must describe with particularity each and every building, or other form of improvement where plumbing work was performed at a mining project, particularly where one party owns all the buildings and improvements at the mine site. *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984).

**Cited** *Steltz v. Armory Co.*, 15 Idaho 551, 99 P. 98 (1908).

## RESEARCH REFERENCES

**ALR.** — Effect of a single mechanic's lien under an entire contract against two or more separate buildings on different lots in same ownership. 15 A.L.R.3d 73.



**§ 45-509. Record of lien claims.** — The county recorder must record the claims mentioned in this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

**History.**

1893, p. 49, ch. 1, § 8; reen. 1899, p. 147, ch. 1, § 8; reen. R.C. & C.L., § 5117; C.S., § 7348; I.C.A., § 44-509.

**STATUTORY NOTES**

**Cross References.**

Fees of recorder, § 31-3205.

Index of records, § 31-2404.

**CASE NOTES**

**Acknowledgement.**

Laborers and materialmen have the right to assert and obtain a lien which need not include an acknowledgement for it to be properly recorded against the property upon which they have performed labor or for which they have furnished materials. *A-J Corp. v. GVR Ltd.*, 107 Idaho 1101, 695 P.2d 1240 (1985).

**§ 45-510. Duration of lien.** — (1) No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or unless a payment on account is made, or extension of credit given with expiration date thereof, and such payment or credit and expiration date, is endorsed on the record of the lien, then six (6) months after the date of such payment or expiration of extension. The lien of a final judgment obtained on any lien provided for in this chapter shall cease ten (10) years from the date the judgment becomes final.

(2) Nothing in this chapter requires that a trustee of a deed of trust as defined and required by section 45-1502 et seq., Idaho Code, be included in a claim of lien or foreclosure or judgment under this chapter.

#### **History.**

1893, p. 49, ch. 1, § 9; reen. 1899, p. 147, ch. 1, § 9; reen. R.C. & C.L., § 5118; C.S., § 7349, I.C.A., § 44-510; am. 1947, ch. 125, § 1, p. 292; am. 2015, ch. 278, § 5, p. 1137; am. 2015, ch. 339, § 2, p. 1271.

### **STATUTORY NOTES**

#### **Amendments.**

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 278, in subsection (1), near the end of the last sentence, substituted “ten (10) years” for “five (5) years” and deleted “but if such period of five (5) years has expired or will expire before September 1, 1947, the owner of such judgment lien shall have until September 1, 1947, within which to levy execution under such judgment” following “becomes final.”

The 2015 amendment, by ch. 339, added the subsection (1) designation to the existing provisions and added subsection (2).

#### **Effective Dates.**

Section 6 of S.L. 2015, ch. 278, provided that the act should take effect on and after July 1, 2015, and shall apply only to judgments issued on and after July 1, 2015, by a court of competent jurisdiction.

## CASE NOTES

Action timely.

Attorney fees.

Computation of time period.

Effect of running of period.

Effect on lienholders not joined.

Extension of time.

Lis pendens.

Perfection of interest.

Right as affected by limitation.

Running of period of limitation.

### **Action Timely.**

To restrict time within which materialman must perfect its lien to one day less than six months would not be in keeping with the policy of liberal construction embodied in § 73-102. Accordingly, where materialman filed lien on property and second materialman filed foreclosure action in which first materialman was named as a defendant, and where the last day of the six-month limitation period fell on a Saturday, the time period was carried over to the next business day, pursuant to [Idaho R. Civ. P. 6\(a\)](#), and first materialman's answer, counterclaim and cross-claim, which were filed on the following Monday, were timely. [Cather v. Kelso, 103 Idaho 684, 652 P.2d 188 \(1982\)](#).

Plaintiff's motion for leave to amend its complaint, originally filed in relation to a first mechanic's lien, commenced proceedings within the statutory time period under this section on a second mechanic's lien: thus, plaintiff was not barred from filing and foreclosing on the second

mechanic's lien. *Terra-West, Inc. v. Idaho Mut. Trust, LLC*, 150 Idaho 393, 247 P.3d 620 (2010).

### **Attorney Fees.**

Plaintiff was entitled to recover interest from date the balance of debt became due, but not attorney fees, where the plaintiff was not entitled to foreclosure due to failure to make wife a party to the proceeding within six month period. *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956).

### **Computation of Time Period.**

Based upon § 1-212, which recognizes the power of the Supreme Court to make procedural rules, and *Idaho R. Civ. P. 6(a)*, which establishes the method for computing time periods, it is clear that the legislature and the Supreme Court were attempting to compensate for the closure of the clerk's office on weekends and holidays and, in this regard, the time limitation contained in this section is analogous to a statute of limitation; when one considers the purpose of the rule and the statute the only interpretation is that *Idaho R. Civ. P. 6(a)* is applicable to this section. This interpretation permits the court clerk's office to be closed on Saturdays, Sundays and legal holidays without shortening the time established by the legislature within which the action must be filed; to hold otherwise, for all practical purposes, would result in a shortening of the statutory limitation period. *Cather v. Kelso*, 103 Idaho 684, 652 P.2d 188 (1982).

Lienor seeking to enforce a mechanic's lien against property encumbered by a deed of trust must name the trustee of the deed of trust within the statutory period to give effect to the mechanic's lien against subsequent holders of legal title. *Parkwest Homes, LLC v. Barnson*, 154 Idaho 678, 302 P.3d 18 (2013).

### **Effect of Running of Period.**

Where consideration of note was removal of lien on real property within one year, action on note is premature before expiration of year, even though lien was removed by operation of law, since it still remained a cloud on the title. *Roberts v. Harrill*, 42 Idaho 555, 247 P. 451 (1926).

### **Effect on Lienholders Not Joined.**

Mortgagee not made party to foreclosure suit is not bound by the judgment nor is the lien after the expiration of the statutory period of any effect as against mortgagee's interest. *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942 (D. Idaho 1913).

Statute does not prescribe in terms who shall be made parties to suit, but it necessarily means suit must be brought against all whose rights, estates or interests are claimed to be adverse and subordinate; otherwise they are not affected by it, and as to them lien ceases to be effective after expiration of six months' limitation period. *Continental & Com. Trust & Sav. Bank v. Pacific Coast Pipe Co.*, 222 F. 781 (9th Cir. 1915); *D.W. Standrod & Co. v. Utah Implement-Vehicle Co.*, 223 F. 517 (9th Cir. 1915).

Husband's half interest in property could not be foreclosed upon by holder of mechanic's lien though suit was filed within six month period against the husband, where the wife was not made a party within the six month period. *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956).

Lien against wife was lost though suit was filed against husband within six months period where the wife was not made a party to the proceeding until over a year after the claim was filed. *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956).

Although previously held valid as to the beneficiary of the deeds of trust, a mechanic's lien was not valid as to a trustee's sale buyer because the builder did not name the trustee of the deeds of trust within the six-month period required in order to give effect to a mechanic's lien against subsequent holders of legal title. Under § 45-1502(4), the trustee was the holder of legal title. *Parkwest Homes, LLC v. Barnson*, 154 Idaho 678, 302 P.3d 18 (2013).

### **Extension of Time.**

Time within which action to enforce lien can be commenced after lien has been filed cannot be extended, as against another encumbrancer, by agreement between lienor and owner. *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

Agreement to extend time for foreclosure of mechanic's lien is not a giving of credit. *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

A payment on account made and indorsed on the record of the lien within six months after the claim has been filed does, within the meaning of the statute, extend the duration of a lien covered by said statute for a period of six months after such payment. However, additional or successive payments on account, even though indorsed on the record of the lien, no matter when made, will not extend the duration of the lien beyond the six-month period following the first payment. *Palmer v. Bradford*, 86 Idaho 395, 388 P.2d 96 (1963).

### **Lis Pendens.**

It is necessary to file a lis pendens in connection with an action to foreclose a mechanic's lien in order to give constructive notice of the foreclosure of the lien beyond the six-month period required for commencing such action. *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First Nat'l Bank*, 117 Idaho 29, 784 P.2d 885 (1989).

### **Perfection of Interest.**

The commencement of proceedings to enforce a statutory materialmen's lien within the six-month period of this section is not an element of "perfection" as required to perfect an interest in property under the bankruptcy code, but is merely a time limitation on enforcement which is tolled by 11 U.S.C. § 108(c) of the bankruptcy code. *First Am. Title Co. v. Design Bldrs., Inc.*, 18 Bankr. 392 (Bankr. D. Idaho 1981).

### **Right as Affected by Limitation.**

Time limitation prescribed by this section makes remedy a part of and conditions right created. Unless suit is brought within time limited, lien itself ceases to exist. *Continental & Com. Trust & Sav. Bank v. Pacific Coast Pipe Co.*, 222 F. 781 (9th Cir. 1915).

This section and Idaho R. Civ. P. 3(a) and 4(a) provide the only limitations in foreclosure of mechanics' liens, which are, first, that proceedings must be commenced for foreclosure of liens within six months after claim of lien is filed, and, second, that summons may be issued at any time within one year after the commencement of action. *Shaw v. Martin*, 20 Idaho 168, 117 P. 853 (1911).

Lien does not continue unless proceedings are commenced in proper court against person or persons against whose interest lien is asserted,

within time limited by statute. *Western Loan & Bldg. Co. v. Gem State Lbr. Co.*, 32 Idaho 497, 185 P. 554 (1919); *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

### **Running of Period of Limitation.**

Six months' period of limitation begins to run immediately upon filing lien, and any disability which arrests running of statute must exist at time right of action accrues. Statute having once attached, period will continue to run and is not suspended by any subsequent disability. *Boise Payette Lbr. Co. v. Weaver*, 40 Idaho 516, 234 P. 150 (1925).

**Cited** *Jones v. Lickley*, 453 F. Supp. 44 (D. Idaho 1978); *Bonner Bldg. Supply, Inc. v. Standard Forest Prods., Inc.*, 106 Idaho 682, 682 P.2d 635 (Ct. App. 1984).

**§ 45-511. Recovery by contractor — Deduction of debts to subcontractors.** — The original or subcontractor shall be entitled to recover, upon the claim filed by him, only such amount as may be due to him according to the terms of his contract, and, if applicable, such other amounts as may be found due to the lien claimant by the court pursuant to [section 45-522, Idaho Code](#), after deducting all claims of other parties for work done and materials furnished to him as aforesaid, of which claim of lien shall have been filed as required by this chapter, and in all cases where a claim shall be filed under this chapter for work done or materials furnished to any subcontractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the person indebted to the contractor may withhold from such contractor the amount of money for which claim is filed; and in case of judgment upon the lien, the person indebted in the contract shall be entitled to deduct from any amount due or to become due by him to such contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due from him to such contractor, if the person indebted in the contract shall have settled with such contractor in full, he shall be entitled to recover back from such contractor any amount so paid by him in excess of the contract price, and for which such contractor was originally the party liable.

**History.**

1893, p. 49, ch. 1, § 10; reen. 1899, p. 147, ch. 1, § 10; reen. R.C. & C.L., § 5119; C.S., § 7350; I.C.A., § 44-511; am. 1993, ch. 378, § 2, p. 1386.

**CASE NOTES**

[Contractor's lien.](#)

[Duty to defend.](#)

[Lien right for material exists.](#)

[Materialman as original contractor.](#)

**[Contractor's Lien.](#)**



Where owners of railroad right of way authorized contractors to put crew of men to work upon such right of way, and agree to pay such contractors amount actually expended in labor and material, plus twenty per cent, and a certain sum for use of tools, and contractors present bill to railway company which is audited and approved by company, it becomes an account stated, to secure and support which a lien may be filed. *Naylor v. Lewiston & S.E. Elec. Ry.*, 14 Idaho 789, 96 P. 573 (1908).

Contractor is entitled to his lien not only for his own labor but for labor of those under him, and even though his workmen have taken out liens, effect is only to diminish contractor's lien pro tanto. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Corporation cannot have laborer's lien. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

### **Duty to Defend.**

The district court did not err in ruling, at the summary judgment stage, that contractor rather than building owner had the duty to defend against the claims of the subcontractors. Although this section did not explicitly place the duty upon the contractor, that intent was implicit in the statutory scheme. *Bouten Constr. Co. v. M & L Land Co.*, 125 Idaho 957, 877 P.2d 928 (Ct. App. 1994).

### **Lien Right for Material Exists.**

A lumber company which furnished materials to be used in improving owners' dwelling could enforce lien against the building without first seeking payment for the materials from the original contractor. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Materialman as Original Contractor.**

Materialman who contracts directly with owner and has no privity of interest and no contract with contractor for construction is an original contractor. *Colorado Iron Works v. Riekenberg*, 4 Idaho 262, 38 P. 651 (1894).

**Cited** *Boise-Payette Lumber Co. v. Challis Indep. Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928).

## RESEARCH REFERENCES

**ALR.** — Right of subcontractor who has dealt only with primary contractor to recover against property owner in quasi contract. [62 A.L.R.3d 288](#).

Release or waiver of mechanic's lien by general contractor as affecting rights of subcontractor or materialman. [75 A.L.R.3d 505](#).

**§ 45-512. Judgment to declare priority.** — In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order:

1. All laborers, other than contractors or subcontractors.
2. All materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#), other than contractors or subcontractors.
3. Subcontractors.
4. The original contractor.
5. All professional engineers and licensed surveyors.

And in case the proceeds of sale under this chapter shall be insufficient to pay all lienholders under it: 1. The liens of all laborers, other than the original contractor and subcontractor, shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

2. The lien of materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in [section 28-12-309, Idaho Code](#), other than the original contractor or subcontractor, shall be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

3. Out of the remainder, if any, the subcontractors shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid pro rata to the original contractor and the professional engineers and licensed surveyors; and each claimant shall be entitled to execution for any balance due him after such distribution; such execution to be issued by the clerk of the court upon demand, at the return of the sheriff or other officer making the sale, showing such balance due.

### **History.**

1893, p. 49, ch. 1, § 11; reen. 1899, p. 147, ch. 1, § 11; reen. R.C. & C.L., § 5120; C.S., § 7351; I.C.A., § 44-512; am. 1971, ch. 91, § 6, p. 196; am. 2001, ch. 152, § 6, p. 550.

## CASE NOTES

Contractors and subcontractors.

Deficiency judgment.

Determination of priorities.

Nature of judgment.

Priority of assignee.

Subcontractor's lien.

### **Contractors and Subcontractors.**

Materialman who contracts directly with owner and has no privity of interest and no contract with contractor for construction is an original contractor. *Colorado Iron Works v. Riekenberg*, 4 Idaho 262, 38 P. 651 (1894).

Corporation furnishing labor and material in installing plumbing and heating, contracting directly with original contractor for building, is entitled to lien as subcontractor only and not as materialman. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

Corporation is not entitled to labor lien. *Riggen v. Perkins*, 42 Idaho 391, 246 P. 962 (1926).

### **Deficiency Judgment.**

A subcontractor may obtain a deficiency judgment against the landowners. *Weber v. Eastern Idaho Packing Corp.*, 94 Idaho 694, 496 P.2d 693 (1972).

In an action to foreclose a mechanic's lien brought by a subcontractor who furnished labor and materials in connection with the installation of a heating system in a dwelling, the subcontractor was not entitled to a personal judgment against the homeowner for any deficiency which might remain after the foreclosure sale, where the homeowner was not in a direct contractual relationship with the subcontractor. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

### **Determination of Priorities.**

This section applies to cases in which there are no intervening mortgage liens; where mortgage liens are involved, time or date when building was commenced or laborer began to work, or materialman commenced to furnish material, must be taken into consideration in determining priority of such liens over mortgage liens. *Pacific States Sav. Loan & Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905).

Using this section and § 45-506 as the mechanism to set the priority of plaintiff's mechanics lien as against the mortgage liens of the trusts, the district court's review of the mortgage lien on the property held by the trusts was proper. *Bouten Constr. Co. v. H.F. Magnuson Co.*, 133 Idaho 756, 992 P.2d 751 (1999).

### **Nature of Judgment.**

Judgment and decree foreclosing mechanic's or laborer's lien and directing sale of property on which lien is claimed is not a money judgment, providing for supersedeas bond in double amount of judgment. *Naylor & Norlin v. Lewiston & S.E. Elec. Ry. Co.*, 14 Idaho 722, 95 P. 827 (1908).

Deficiency judgment is in effect provided for in this section by provision for execution for balance that may be due. *Blake v. Crystalline Lime Co.*, 37 Idaho 637, 221 P. 1100 (1923).

### **Priority of Assignee.**

In lien foreclosure where all parties claiming same were joined in same action and, after judgment, two claimants assigned their judgments to another claimant and the heirs of deceased owner assigned their interest to the same assignee, the legal title to the property was then merged in assignee unless such merger would cause injustice to a junior lien. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

### **Subcontractor's Lien.**

The uncollected balance of a subcontractor's lien which does not duplicate part of the contractor's lien is treated as a personal judgment, and, where the requirements for personal jurisdiction are met, the subcontractor's lien is an effective personal judgment against the landowners. *Weber v. Eastern Idaho Packing Corp.*, 94 Idaho 694, 496 P.2d 693 (1972).

**Cited** Ultrawall, Inc. v. Washington Mut. Bank, 135 Idaho 832, 25 P.3d 855 (2001).

**§ 45-513. Joinder of actions — Filing fees as costs — Attorney's fees.**

— Any number of persons claiming liens against the same property may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing and recording the claim, and reasonable attorney's fees.

**History.**

1893, p. 49, ch. 1, § 12; reen. 1899, p. 147, ch. 1, § 12; reen. R.C. & C.L., § 5121; C.S., § 7352; I.C.A., § 44-513.

**CASE NOTES**

Application of Idaho R. Civ. P 54.

Attorney's fees.

Constitutionality.

Legislative intent.

Parties.

**Application of Idaho R. Civ. P 54.**

To the extent that **Idaho R. Civ. P 54**, which requires the finding of a prevailing party within the discretion of the district court, is inconsistent with this section, which provides for a mandatory award of attorney fees as part of the enforcement of a lien, the rule has no application and does not modify the statute. **Olsen v. Rowe**, 125 Idaho 686, 873 P.2d 1340 (Ct. App. 1994).

**Attorney's Fees.**

Attorney's fees are allowed in the foreclosure of mechanics' and laborers' liens. **Robertson v. Moore**, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds, **Dover Lumber Co. v. Case**, 31 Idaho 276, 170 P. 108 (1918).

Attorney's fees are not a part of the cost and, therefore, are recoverable, even though the amount of judgment is less than \$100. *Shaw v. Johnston*, 17 Idaho 676, 107 P. 399 (1910).

Attorney's fees are an incident of the judgment and defendant is liable therefor. *Smith v. Faris-Kesl Constr. Co.*, 27 Idaho 407, 150 P. 25 (1915).

The omission of a part of the law adopted from California, to provide for attorney's fees for work in the supreme court, is sufficient to show that it was the legislative intent not to adopt that part of the California law. *Hendrix v. Gold Ridge Mines, Inc.*, 54 Idaho 326, 54 P.2d 254 (1936).

Where plaintiff filed suit to recover wages before wages were due but they were due at time of appeal the judgment in favor of plaintiff would not be reversed but that part of the judgment allowing attorney fees would be stricken. *Schlueter v. Nelson*, 74 Idaho 396, 263 P.2d 386 (1953).

Plaintiff was entitled to attorney fee in suit to foreclose mechanic's lien although he did not establish full amount of claim. *Guyman v. Anderson* (1954), 75 Idaho 294, 271 P.2d 1020.

This section only authorizes district court to allow attorney fees for foreclosing liens. *Ivie v. Peck*, 94 Idaho 625, 495 P.2d 1110 (1972).

This statute does not permit recovery of attorney fees on appeal by mechanic's lien claimants. *Weber v. Eastern Idaho Packing Corp.*, 94 Idaho 694, 496 P.2d 693 (1972), overruled on other grounds, *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

In an action to foreclose a mechanic's lien brought by a subcontractor who furnished labor and materials in connection with the installation of a heating system in a dwelling, subcontractor's attorney was not entitled to be awarded a fee for the time spent in preparing the mechanic's lien. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975).

Where a contractor stipulated to release its materialmen's lien upon condition that a sufficient sum of money would be held in a special account to pay any balance found to be due the contractor, the stipulation did not displace the contractor's right to an attorney fee on his successful cross-claim against the property owners to foreclose his materialmen's lien, since the cross-claim, seeking to recover from the special account fund, was the



functional equivalent of an action to foreclose the lien. *J.E.T. Dev. v. Dorsey Constr. Co.*, 102 Idaho 863, 642 P.2d 954 (Ct. App. 1982).

The fact that the amount determined to be due a contractor under a construction contract was less than the amount claimed by the contractor in its notice of a materialmen's lien did not bar recovery by the contractor of a statutory attorney fee under this section because a reasonable attorney fee was an incident of foreclosure of the lien. *J.E.T. Dev. v. Dorsey Constr. Co.*, 102 Idaho 863, 642 P.2d 954 (Ct. App. 1982).

Both a general contractor and the landowner are responsible for the attorney fees incurred in legal proceedings to collect the claim of a materialmen's lien. *Acoustic Specialties, Inc. v. Wright*, 103 Idaho 595, 651 P.2d 529 (1982).

Where the owners of the property retained the money due the principal contractor and, apparently without cause or right, contested the materialmen's garnishment as well as foreclosure proceedings on every point, and litigated the case to the end, thereby delaying the materialmen in recovering on the partial summary judgments they were entitled to, and putting them to unnecessary legal expense, it was proper to allow the materialmen attorney fees payable out of the proceeds of the foreclosure sale of the owners' real property. *Acoustic Specialties, Inc. v. Wright*, 103 Idaho 595, 651 P.2d 529 (1982).

This section has been interpreted by the Idaho Supreme Court to provide no basis for a successful lien claimant to receive attorney fees on appeal. However, these decisions do not insulate lien foreclosure cases from discretionary awards of attorney fees on appeal under § 12-121. Therefore, where the appellate court has left with the abiding belief that an appeal was brought without foundation, it appropriately awarded attorney fees on appeal to the appellee. *W.F. Constr. Co. v. Kalik*, 103 Idaho 713, 652 P.2d 661 (Ct. App. 1982).

This section does not authorize an award of attorney fees on appeal; an award may be made under § 12-121, but only if the appeal was brought or defended frivolously, unreasonably or without foundation. *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

This section has been construed to exclude appeals. *Eimco Div. v. United Pac. Ins. Co.*, 109 Idaho 762, 710 P.2d 672 (Ct. App. 1985).

Attorney fees are not recoverable on appeal under this section; however an award could be made under § 12-121, but only if the court found that defendant's appeal was brought or pursued "frivolously, unreasonably or without foundation." *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 115 Idaho 373, 766 P.2d 1254 (Ct. App. 1988).

The trial court is free to consider all factors it deems as having a bearing on attorney fees in its determination of what is reasonable. *Barber v. Honorof*, 116 Idaho 767, 780 P.2d 89 (1989).

When a party successfully forecloses on a lien filed pursuant to § 45-507, that party is entitled to an award of the costs associated with the foreclosure pursuant to this section. *Olsen v. Rowe*, 125 Idaho 686, 873 P.2d 1340 (Ct. App. 1994).

Upon the successful entry of a judgment of foreclosure of a lien claimed under § 45-507, an award of attorney fees and costs is mandatory. The amount of the award, however, is still a matter of discretion for the district court. In determining the amount, the district court is free to consider the factors of *Idaho R. Civ. P 54* as well as those considerations which are part of a prevailing party analysis under *Idaho R. Civ. P 54*. *Olsen v. Rowe*, 125 Idaho 686, 873 P.2d 1340 (Ct. App. 1994).

Where plaintiffs who claimed liens were not successful in their claims, and where neither out-of-state bond statutes nor the theory of unjust enrichment provided relief to any of them, awards of attorney fees to the plaintiffs were not appropriate. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999).

Since the costs of filing and recording, as well as the attorney fees, are incidental to the foreclosure of a lien pursuant to this section, the award of attorney fees as part of the enforcement of the lien was a mandatory award. *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 41 P.3d 242 (2001).

Although attorney fees on appeal by materialman's lien claimants are not available pursuant to this section, an award could be made under § 12-121 if the appeal was brought frivolously, unreasonably or without foundation. *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 87 P.3d 955 (2004).

Where a builder bought materials from a supplier to use on defendants' building project and the supplier was entitled to a lien on the buildings that the project produced, the supplier was entitled to costs and fees on appeal as the prevailing party. [BMC West Corp. v. Horkley](#), 144 Idaho 890, 174 P.3d 399 (2007).

This section does not allow the award of attorney fees on appeal by materialman's lien claimants. [Stonebrook Constr., LLC v. Chase Home Fin., LLC](#), 152 Idaho 927, 277 P.3d 374 (2012).

Materialmen foreclosing a lien could recover from subsequent buyers of the property the attorney fees reasonably incurred in responding to a lender's attempts to prevent a foreclosure sale. It was immaterial whether the buyers had any responsibility for those costs being incurred. [Magleby v. Garn](#), 154 Idaho 194, 296 P.3d 400 (2013).

Materialmen foreclosing a lien could recover attorney fees on appeal from the builders under § 12-120 where the issue on appeal was the amount of attorney fees awarded by the trial court, rather than the entitlement to an award. Attorney fees on appeal could not be awarded under § 12-121, however, because this section applied instead. [Magleby v. Garn](#), 154 Idaho 194, 296 P.3d 400 (2013).

After prevailing in a mechanic's lien foreclosure action, a trustee's sale buyer could not recover attorney fees on appeal from the builder under §§ 12-120(3) and 12-121 because the more specific statute governing attorney fees in an action to foreclose a mechanic's lien, this section, does not provide for fees on appeal. [Parkwest Homes, LLC v. Barnson](#), 154 Idaho 678, 302 P.3d 18 (2013).

District court did not err in apportioning a landscape developer's costs and attorney's fees by finding that the developer only partially prevailed in litigation to determine priority between the developer's mechanics lien and a financial lender's mortgages. [Credit Suisse Ag v. Teufel Nursery, Inc.](#), 156 Idaho 189, 321 P.3d 739 (2014).

Denial of an award of attorney's fees for failure to plead a specific amount, as required by Idaho Rule of Civil Procedure, is not inconsistent with the mandatory award language in this section. [Regdab, Inc. v. Graybill](#), 165 Idaho 293, 444 P.3d 323 (2019).

Because defendants relied on plaintiff's complaint and its failure to contain a specific amount for attorney fees in making the decision not to defend the suit and actually tendered payment in full before the default judgment was entered, defendants would have been prejudiced if plaintiff was permitted to amend its complaint, adding a specific amount of attorney fees on default. *Regdab, Inc. v. Graybill*, 165 Idaho 293, 444 P.3d 323 (2019).

### **Constitutionality.**

Provision of this section which authorizes recovery of attorney's fee is not class legislation and does not violate Idaho Const., Art. I, § 18, providing that justice shall be administered without sale. *Thompson v. Wise Boy Mining & Milling Co.*, 9 Idaho 363, 74 P. 958 (1903).

This section does not violate the guarantee of equal protection of the law by allowing attorney fees to the lienor but not allowing them to the property owner successfully resisting lien foreclosure nor by singling out and penalizing a single class of debtors. *Harrington v. McCarthy*, 91 Idaho 307, 420 P.2d 790 (1966).

A contractor was entitled to reasonable attorney fees where it was held that he could obtain a lien on property for the entire amount due, including the amount owing for work done on an easement road attached to the property. *Fairfax v. Ramirez*, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

### **Legislative Intent.**

In light of the clear legislative intent to restrict the recovery of attorney fees in a lien foreclosure to those incurred in district court, the appellate court declined to award the prevailing party attorney fees for his prosecution of a cross-appeal. *Fairfax v. Ramirez*, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

### **Parties.**

Though parties are joined under this section, if actions are individual, parties will be recognized as separate in their respective rights. *Nelson Bennett Co. v. Twin Falls Land & Water Co.*, 14 Idaho 5, 93 P. 789 (1908); *Shaw v. Martin*, 20 Idaho 168, 117 P. 853 (1911); *Hill v. Twin Falls Salmon River Land & Water Co.*, 22 Idaho 274, 125 P. 204.

In an action to foreclose a mechanic's lien, the court properly joined all parties claiming liens against the same property. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

In lien foreclosure where all parties claiming same were joined in same action and, after judgment, two claimants assigned their judgments to another claimant and the heirs of deceased owner assigned their interest to the same assignee, the legal title to the property was then merged in assignee unless such merger would cause injustice to a junior lien. *Brown v. Hawkins*, 66 Idaho 351, 158 P.2d 840 (1945).

**Cited** *Pacific States Sav., Loan & Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905); *Boise-Payette Lumber Co. v. Challis Indep. Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928); *Scogings v. Andreason*, 91 Idaho 176, 418 P.2d 273 (1966); *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972); *Hafer v. Horn*, 95 Idaho 621, 515 P.2d 1013 (1973); *Del Milam & Sons v. Bailey*, 107 Idaho 587, 691 P.2d 1202 (1984); *LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc.*, 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985); *Baker v. Boren*, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997); *L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 40 P.3d 96 (2002); *Franklin Bldg. Supply Co. v. Sumpter*, 144 Idaho 496, 163 P.3d 1208 (Ct. App. 2003); *Perception Constr. Mgmt. v. Bell*, 151 Idaho 250, 254 P.3d 1246 (2011); *Intermountain Real Props., LLC v. Draw, LLC*, 155 Idaho 313, 311 P.3d 734 (2013).

## RESEARCH REFERENCES

**Idaho Law Review.** — Attorney Fee Awards in Idaho: A Handbook, Comment. 52 Idaho L. Rev. 583 (2016).

**ALR.** — Excessiveness or adequacy of attorneys' fees in matters involving real estate — Modern cases. 10 A.L.R.5th 448.

**§ 45-514. Exemption of materials from execution.** — Whenever materials shall have been furnished for use in the construction, alteration or repair of any buildings, or other improvement, such materials shall not be subject to attachment, execution or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as, in good faith, the same are being applied to the construction, alteration or repair of such building, mining claim or other improvement.

**History.**

1893, p. 49, ch. 1, § 13; reen. 1899, p. 147, ch. 1, § 13; reen. R.C. & C.L., § 5122; C.S., § 7353; I.C.A., § 44-514.

**CASE NOTES**

**No Attempt to Collect.**

A lumber company which furnished materials to be used in improving owners' dwelling could enforce lien against the building without first seeking payment for the materials from the original contractor. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

**RESEARCH REFERENCES**

**ALR.** — Delivery of material to building site as sustaining mechanic's lien — Modern cases. 32 A.L.R.4th 1130.

**§ 45-515. Action to recover debt.** — Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, equipment, materials or fixtures rented or leased or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

**History.**

1893, p. 49, ch. 1, § 14; reen. 1899, p. 147, ch. 1, § 14; reen. R.C. & C.L., § 5123; C.S., § 7354; I.C.A., § 44-515; am. 2001, ch. 152, § 7, p. 550.

**CASE NOTES**

Attorney's fees.

Contract right not invalidated.

Enforcement of materialman's lien.

Nature of judgment.

Right to other remedy.

**Attorney's Fees.**

This section allows the materialman lien claimant to collect the debt both through foreclosure of the lien and a personal action against the contractor. Accordingly, the fact that the subcontractor materialmen had not yet reduced to judgment their claims for attorney fees against the principal contractor did not prevent their obtaining a judgment for those fees against the owners of the real property. *Acoustic Specialties, Inc. v. Wright*, 103 Idaho 595, 651 P.2d 529 (1982).

**Contract Right Not Invalidated.**

Although plaintiff did not succeed in preserving a lien on the defendants' interest in the real property and was not entitled to foreclosure, this did not invalidate his personal judgment against defendants for moneys due on the underlying contract, less setoffs. *Ross v. Olson*, 95 Idaho 915, 523 P.2d 518 (1974).



### **Enforcement of Materialman's Lien.**

A lumber company furnishing materials to improve owners' dwelling can enforce a materialman's lien against the dwelling, without first seeking payment from the original contractor. *Idaho Lbr. & Hdw. Co. v. DiGiacomo*, 61 Idaho 383, 102 P.2d 637 (1940).

### **Nature of Judgment.**

Judgment foreclosing mechanic's lien was not a money judgment. *Naylor & Norlin v. Lewiston & S.E. Elec. Ry. Co.*, 14 Idaho 722, 95 P. 827 (1908).

### **Right to Other Remedy.**

This section contemplates that when one erroneously asserts right to mechanic's lien such action shall not be construed to impair or affect his right to recover in indebitatus assumpsit for work done or material furnished. *Lus v. Pecararo*, 41 Idaho 425, 238 P. 1021 (1925). This right is recognized in *Boise Lumber Co. v. Independent School Dist.*, 36 Idaho 778, 214 P. 143 (1923), where it was held that, by reason of valid tender before filing of lien, right to lien was extinguished, but plaintiff was allowed right to recover material furnished.

## **RESEARCH REFERENCES**

**ALR.** — Modern view as to validity of statute permitting sale of vehicle without hearing. 64 A.L.R.3d 814.



**§ 45-516. Rules of practice and appeals.** — Except as otherwise provided in this chapter, the provisions of this code relating to civil actions, new trials and appeals are applicable to, and constitute the rules of practice in, the proceedings mentioned in this chapter: provided, that the district courts shall have jurisdiction of all actions brought under this chapter.

**History.**

1893, p. 49, ch. 1, § 15; reen. 1899, p. 147, ch. 1, § 15; reen. R.C. & C.L., § 5124; C.S., § 7355; I.C.A., § 44-516.

**STATUTORY NOTES**

**Cross References.**

Appeals, § 13-201 et seq.

**CASE NOTES**

Attorney fees.

Lis pendens.

Nature of action.

Sufficiency of complaint.

**Attorney Fees.**

Plaintiff was entitled to recover interest from date the balance of debt became due, but not attorney fees, where the plaintiff was not entitled to foreclosure due to failure to make wife a party to the proceeding within six month period. *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956).

**Lis Pendens.**

It is necessary to file a lis pendens in connection with an action to foreclose a mechanic's lien in order to give constructive notice of the foreclosure of the lien beyond the six-month period required for commencing such action. *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First Nat'l Bank*, 117 Idaho 29, 784 P.2d 885 (1989).

### **Nature of Action.**

Action to foreclose mechanic's lien is equitable in its nature and court is not bound to submit any issue of fact to the jury; if it does so, it may disregard verdict and findings and may enter a decree according to its own view of evidence in the case. *Idaho & Oregon Land Imp. Co. v. Bradbury*, 132 U.S. 509, 10 S. Ct. 177, 33 L. Ed. 433 (1889); *Jensen v. Bumgarner*, 25 Idaho 355, 137 P. 529 (1913).

### **Sufficiency of Complaint.**

Complaint for foreclosure of laborer's lien that sufficiently describes property, fixes time and manner of labor, amount due, and alleges that lien was filed within statutory time, together with the necessary requirements in ordinary suits in equity, is sufficient. *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds, *Dover Lumber Co. v. Case*, 31 Idaho 276, 170 P. 108 (1918).

**Cited** *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942 (D. Idaho 1913); *Shaw v. Martin*, 20 Idaho 168, 117 P. 853 (1911); *Dawson v. Eldredge*, 89 Idaho 402, 405 P.2d 754 (1965).

**§ 45-517. Lien for worker's compensation security.** — The term “labor” as used in this title shall include the cost of worker's compensation and occupational disease compensation security required by the provisions of [sections 72-301 through 72-304, Idaho Code](#), and amendments thereto, payment for which security has not been made.

**History.**

[I. C., § 45-517](#), as added by 1951, ch. 234, § 1, p. 471; am. 2015, ch. 244, § 26, p. 1008.

**STATUTORY NOTES**

**Amendments.**

The 2015 amendment, by ch. 244, substituted “worker’s” for “workmen’s” in the section heading and in the section text and substituted “[sections 72-301 through 72-304, Idaho Code](#)” for “[Idaho Code, Section 72-801 and Section 72-1203](#)”.

**CASE NOTES**

[Insurance.](#)

[Open account defense.](#)

**[Insurance.](#)**

While the legislature has provided protection for the recovery of worker's compensation security in the mechanic's lien laws, it has not so provided for any other form of insurance. [Great Plains Equip., Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 979 P.2d 627 \(1999\).](#)

**[Open Account Defense.](#)**

The open account defense applies to those claimants attempting to recover under the state's mechanic's lien statutes, even those parties who assert a lien in the worker's compensation context. [Great Plains Equip., Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 979 P.2d 627 \(1999\).](#)

**§ 45-518. Release of lien on real property by posting surety bond — Manner.** — A mechanic's lien of record upon real property may be released upon the posting of a surety bond in the manner provided in sections 45-519 through 45-524, Idaho Code.

**History.**

I.C., § 45-518, as added by 1993, ch. 378, § 3, p. 1386.

**CASE NOTES**

**Purpose.**

A lien release bond is merely meant to act as substitute security for real property and does not otherwise affect the rights of interested parties. *Am. Bank v. Wadsworth Golf Constr. Co. of the Southwest*, 155 Idaho 186, 307 P.3d 1212 (2013).

**§ 45-519. Release of lien on real property by posting surety bond — Form of bond.** — The debtor of the lien claimant or a party in interest in the premises subject to the lien must obtain a surety bond executed by the debtor of the lien claimant or a party in interest in the premises subject to the lien, as principal, and executed by a corporation authorized to transact surety business in this state, as surety, in substantially the following form:

(Title of court and cause, if action has been commenced) WHEREAS,  
..... (name of owner, contractor, or other person disputing the lien)  
desires to give a bond for releasing the following described real property  
from that certain claim of mechanic's lien in the sum of \$ ....., recorded  
....., ....., in the office of the recorder in ..... (name of county  
where the real property is situated): (legal description) NOW,  
THEREFORE, the undersigned principal and surety do hereby obligate  
themselves to ....., (name of claimant) the claimant named in  
the mechanic's lien, under the conditions prescribed by **sections 45-518  
through 45-524, Idaho Code**, inclusive, in the sum of \$ ..... (1-½ x claim),  
from which sum they will pay the claimant such amount as a court of  
competent jurisdiction may adjudge to have been secured by his lien, with  
interest, costs and attorney's fees.

IN WITNESS WHEREOF, the principal and surety have executed this  
bond at ....., Idaho, on the ..... day of ....., .....

.....

(Signature of Principal) (SURETY CORPORATION) BY.....

(Its Attorney in Fact) State of Idaho ) ) ss.

County of ..... ) On ....., ....., before me, the undersigned, a notary  
public of this county and state, personally appeared ..... who  
acknowledged that he executed the foregoing instrument as principal for the  
purposes therein mentioned and also personally appeared .....  
known (or satisfactorily proved) to me to be the attorney in fact of the  
corporation that executed the foregoing instrument and known to me to be  
the person who executed that instrument on behalf of the corporation

therein named, and he acknowledged to me that that corporation executed the foregoing instrument.

.....

(Notary Public in and for the County and State)

**History.**

I.C., § 45-519, as added by 1993, ch. 378, § 4, p. 1386; am. 2002, ch. 32, § 18, p. 46.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**CASE NOTES**

**Limitation.**

The phrase in this form “such amount as a court of competent jurisdiction may adjudge to have been secured by his lien” limits a lienholder to the amount that he could have recovered against the real property in a foreclosure action. It does allow recovery when there were no surplus funds after a foreclosure sale. *Am. Bank v. Wadsworth Golf Constr. Co. of the Southwest*, 155 Idaho 186, 307 P.3d 1212 (2013).

**§ 45-520. Release of lien on real property by posting surety bond — Petition for release — Service of copy of petition.** — (1) A petition for the release of a mechanic's lien by posting a surety bond must be filed in the district court of the county wherein the property is located and shall set forth:

(a) The title of the cause, thus: "In the matter of the petition of ..... (name of petitioner) for release of mechanic's lien of ..... (name of mechanic's lien claimant) upon posting surety bond."

(b) An allegation of the purchase of and payment of the premium for the bond, and the dates of purchase and payment.

(c) An allegation incorporating by reference a true copy of the bond, which copy must be attached to the petition.

(d) The name or names of the owner or reputed owners of the land subject to the lien.

(e) A description of the real property subject to the lien, and the instrument number of the lien as given by the recorder's office.

(f) A prayer for an order releasing the lien.

(2) The petitioner shall obtain an order from the district court setting forth the time and date of the hearing on the petition, which time and date must be at least five (5) days after the date of the order and not more than ten (10) days after the date of the order.

(3) A copy of the petition and a copy of the order must be served on the lien claimant at least two (2) days before the date set for the hearing and served in the manner provided by law for service of summons.

### **History.**

I.C., § 45-520, as added by 1993, ch. 378, § 5, p. 1386.

**§ 45-521. Release of lien on real property by posting surety bond — Hearing on petition — Contents and effect of order releasing lien. —**

(1) Upon the hearing, the court shall enter its order releasing the mechanic's lien upon the petitioner's filing in open court the original bond, and introducing into evidence a receipt for payment of the premium.

(2) The entry of the order by the court must refer to the property which is the subject of the lien and the lien itself, by instrument number, and must recite that the lien is released of record for all purposes to the same extent as if released of record by the lienor.

(3) Upon entry of the order, the lien is released of record in its entirety and for all purposes and the real property, the subject of the lien, is released from the encumbrances of the lien.

(4) There is no appeal from the entry of an order pursuant to the provisions of this section and upon entry the order is final for all purposes.

**History.**

I.C., § 45-521, as added by 1993, ch. 378, § 6, p. 1386.



**§ 45-522. Release of lien on real property by posting surety bond — Action against debtor and surety — Preferential settings.** — (1) The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. The rights of the lien claimant include and the court may award to him in that action:

(a) The amount found due to the lien claimant by the court; (b) The cost of preparing and filing the lien claim, including attorney's fees, if any; (c) The costs of the proceedings; (d) Attorney's fees for representation of the lien claimant in the proceedings; and (e) Interest at the rate of seven percent (7%) per annum on the amount found due to the lien claimant and from the date found by the court that the sum was due and payable.

(2) Proceedings under subsection (1) of this section are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for thirty (30) day setting" in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before Friday next, vacate a case or cases as necessary and set the lien claimant's case for hearing, on a day or days certain, to be heard within thirty (30) days of the filing of the "demand for thirty (30) day setting." Only one (1) such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing of a "demand for thirty (30) day setting," a new preferential setting must be given.

**History.**

I.C., § 45-522, as added by 1993, ch. 378, § 7, p. 1386.

**§ 45-523. Release of lien on real property by posting surety bond — Motion to enforce liability of surety.** — (1) By entering into a bond given pursuant to [section 45-519, Idaho Code](#), the surety submits himself to the jurisdiction of the court in which the bond is filed in the proceeding for release of the lien, and the surety irrevocably appoints the clerk of that court as its agent upon whom any papers affecting its liability on the bond may be served. Its liability may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the surety if his address is known.

(2) The motion described in subsection (1) of this section must not be instituted until the lapse of thirty (30) days following the giving of notice of entry of judgment in the action against the lien claimant's debtor, if no notice of appeal from the judgment is filed, nor may the motion be instituted until the lapse of thirty (30) days following the filing of the remittitur from the court of appeals or the supreme court, if an appeal has been taken from the judgment.

**History.**

[I.C., § 45-523](#), as added by 1993, ch. 378, § 8, p. 1386.

**§ 45-524. Release of lien on real property by posting surety bond — Exception to sufficiency of surety.** — (1) The lien claimant may, within two (2) days after the service of a copy of the petition for release of the lien with a copy of the bond attached thereto pursuant to [section 45-520, Idaho Code](#), file with the clerk of the court in the action a notice excepting to the sufficiency of the surety on the bond, and shall, at the same time and together with that notice, file an affidavit setting forth the grounds and basis of the exceptions to the surety, and shall serve a copy of the notice and a copy of the affidavit upon the attorney or the petitioner on the same date as the date of filing of the notice and affidavit. A hearing must be had upon the justification of the surety at the same time as that set for the hearing on the petition for an order to release the lien.

(2) If the lien claimant fails to file and serve the notice and affidavit within two (2) days after the service of the petition for release of the lien, he shall be deemed to have waived all objection to the justification and sufficiency of the surety.

**History.**

[I.C., § 45-524](#), as added by 1993, ch. 378, § 9, p. 1386.

**§ 45-525. General contractors — Residential property — Disclosures.**

— (1) Legislative intent. This section is intended to protect owners and purchasers of residential real property by requiring that general contractors provide adequate disclosure of potential liens.

(2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars (\$2,000) with a homeowner or residential real property purchaser to construct, alter or repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:

- (a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;
- (b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;
- (c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfilled or unrecorded liens; and
- (d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property

purchaser's expense, a surety bond in an amount up to the value of the construction project.

(3) Subcontractor, materialmen and rental equipment information.

(a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars (\$500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:

(i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or

(ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

(b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.

(c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

(4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(5) Definitions. For purposes of this section:

(a) “General contractor” means a person who enters into an agreement in excess of two thousand dollars (\$2,000) with:

- (i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or
- (ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term “general contractor” does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

(b) “Residential real property” shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

(6) This section shall not apply to instances in which a homeowner or the agent of the homeowner initiates the contact with the general contractor for purposes of providing repairs necessary to meet a bona fide emergency of the homeowner or to make necessary repairs to an electrical, plumbing or water system of the homeowner.

**History.**

I.C., § 45-525, as added by 2002, ch. 307, § 2, p. 876; am. 2004, ch. 225, § 1, p. 667.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2004, ch. 225 declared an emergency. Approved March 23, 2004.



## Chapter 6

### CLAIMS FOR WAGES

Sec.

45-601. Definitions.

45-602. Wages of employees preferred.

45-603. Preference of wages — Death of employer.

45-604. Preference of wages on execution and attachment.

45-605. Debtor or creditor may dispute claim.

45-606. Payment of wages upon separation from employment.

45-607. Penalty for failure to pay.

45-608. Pay periods — Penalty.

45-609. Withholding of wages.

45-610. Records to be kept by employer — Notice to employees.

45-611. Wages that are in dispute.

45-612. Filing false claim — Penalty.

45-613. Discharging or retaliating against employees asserting rights under this chapter.

45-614. Collection of wages — Limitations.

45-615. Collection of wage claims by suit — Attorney's fees and costs.

45-616. Enforcement.

45-617. Administrative proceedings for wage claims.

45-618. Administrative enforcement and collection of wage claims.

45-619. Judicial review.

45-620. Liens.

45-621. Collection of lien amounts.



**§ 45-601. Definitions.** — Whenever used in this chapter:

(1) “Claimant” means an employee who filed a wage claim with the department in accordance with this chapter and as the director may prescribe.

(2) “Department” means the department of labor.

(3) “Director” means the director of the department of labor.

(4) “Employee” means any person suffered or permitted to work by an employer.

(5) “Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person.

(6) “Wage claim” means an employee’s claim against an employer for compensation for the employee’s own personal services, and includes any wages, penalties, or damages provided by law to employees with a claim for unpaid wages.

(7) “Wages” means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece or commission basis.

**History.**

I.C., § 45-609, as added by 1967, ch. 436, § 1, p. 1469; am. 1974, ch. 39, § 72, p. 1023; am. and redesign. 1989, c. 280, § 1, p. 677; am. 1996, ch. 421, § 34, p. 1406; am. 1999, ch. 51, § 2, p. 115.

**STATUTORY NOTES**

**Cross References.**

Department of labor, § 72-1333.

**Compiler’s Notes.**

This section was formerly compiled as § 45-609.

Former § 45-601 was amended and redesignated as § 45-602 by § 2 of S.L. 1989, ch. 280.

The title to S.L. 1967, ch. 436, stated that it was an act to amend chapter 6 of title 44 and the amending clauses of §§ 1 to 6 thereof stated that title 44 was amended by adding certain designated sections and designating such sections as §§ 45-609 to 45-615.

The amending clause of this section read: “Section 1. That chapter 6 of title 44, Idaho Code, be, and the same is hereby amended by adding a new section thereto, following section 45-608, to be known and designated as section 45-609, and to read as follows.”

## CASE NOTES

Constitutionality.

Employee.

Paid time off.

Purpose.

Wages.

**Constitutionality.**

Defendant’s contention that this chapter violates the contract clause of the United States Constitution was without merit; the constitutional impairment of contract clause protects only those contractual obligations already in existence at the time the disputed law is enacted, and Idaho’s wage claim act was first passed in 1893, well before the obligation in question. *State ex rel. Dept. of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).

**Employee.**

By using the term “employee,” the legislature indicated that the provisions of this chapter should apply only to employees, not independent contractors. *Ostrander v. Farm Bureau Mut. Ins. Co.*, 123 Idaho 650, 851 P.2d 946 (1993).

When determining whether there exists an employee/employer relationship for the purpose of Idaho’s wage claim statute, it is not the

labels applied by the parties which control, but rather the actual indicia of such a relationship; the general test of an employee/employer relationship is the right to control work, and if the employer retains the right to control and to direct the activities of the employee in the details of work performed, and to determine the hours to be spent and the times to start and stop the work, the person performing work will be deemed an employee. *State ex rel. Dep't of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).

### **Paid Time Off.**

Paid time off constitutes wages which must be paid within ten days of termination of employment. *Warnecke v. Nitrocision, LLC*, 2012 U.S. Dist. LEXIS 170656 (D. Idaho Nov. 29, 2012).

### **Purpose.**

The 1967 amendment to Idaho's claim for wages statutes was not intended to change the rule enunciated by previous cases which stopped the running of penalties upon a tender of the full amount of wages due. *Gano v. Air Idaho, Inc.*, 99 Idaho 720, 587 P.2d 1255 (1978).

The purpose of the wage and hour law is to ensure that employees receive compensation due to them upon termination of their employment. *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

### **Wages.**

Where an employer was preparing to sell a division of his company within 60 days and promised his employee a bonus of 60 days' additional salary if the employee would remain with the company until the division was sold, such 60-day "pay bonus" was a wage, as defined in this section; thus, employer's refusal to pay such bonus subjected the employer to treble damages under former law. *Neal v. Idaho Forest Indus., Inc.*, 107 Idaho 681, 691 P.2d 1296 (Ct. App. 1984).

In action for breach of employment contract, it was error for the trial judge to treat the cash value of the life insurance policy as wages, where the proceeds of the policy were to be paid to the employee at retirement or to his heirs upon his death. The policy was a fixed benefit of employment status, and as such, it was not compensation earned in increments as services were performed, unlike wages, and also unlike compensation paid

in direct consideration of services rendered, in amounts over and above an employee's regular paychecks. [Whitlock v. Haney Seed Co.](#), 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).

Funds held in a deferral account were "wages" under this section, where the funds were compensation earned in increments as services were performed and the funds were fully earned by the employee when placed in the account, and the fact that there was or could be a balance in the account when the employee terminated his employment did not mean the account was intended as a retirement or similar post-employment benefit. [Bilow v. Preco, Inc.](#), 132 Idaho 23, 966 P.2d 23 (1998).

District court properly affirmed an arbitration panel's refusal to award treble damages and attorney fees on an employee's employment agreement claim because the panel did not rule that the amount owed on the employment agreement claim constituted monies owed for unpaid wages. The arbitrators awarded the employee damages under the heading of "Wage Claim," but the mere use of that shorthand term did not suggest the panel intended the award to represent wages; instead, those damages were part of a liquidated damages provision as articulated in the employment agreement. [Moore v. Omnicare, Inc.](#), 141 Idaho 809, 118 P.3d 141 (2005).

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, the United States court of appeals for the Ninth Circuit requested the Idaho supreme court to accept certification of a question asking whether stock options can be wages under this section. [Paolini v. Albertson's Inc.](#), 418 F.3d 1023 (9th Cir. 2005).

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. [Paolini v. Albertson's, Inc.](#), 143 Idaho 547, 149 P.3d 822 (2006).

District court erred in ruling that the amount owed under a noncompetition/nondisclosure agreement was not wages under subsection (7), where the 12 months' pay provided for in the agreement was not conditioned on compliance with the noncompetition conditions, but was severance pay intended to compensate for past service and to secure

economic well-being. *Huber v. Lightforce USA, Inc.*, 159 Idaho 833, 367 P.3d 228 (2016).

**Cited** *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977); *Smith v. Idaho Peterbilt, Inc.*, 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984); *Latham v. Haney Seed Co.*, 119 Idaho 412, 807 P.2d 630 (1991).

**§ 45-602. Wages of employees preferred.** — In all assignments of property made by any person to trustees or assignees, or in proceedings in insolvency, an employee's wages for services rendered within sixty (60) days preceding such assignment, not exceeding five hundred dollars (\$500), is a preferred claim, and must be paid by such trustees or assignees before any creditor or creditors of the assignor or insolvent debtor; provided, that whenever any such employee has filed a notice of lien against any property of the assignor, the employee may elect between the provisions of this section and the employee's lien.

**History.**

1893, p. 49, ch. 4, § 1; reen. 1899, p. 147, ch. 4, § 1; reen. R.C. & C.L., § 5145; C.S., § 7376; I.C.A., § 44-601; am. and redesign. 1989, c. 280, § 2, p. 677; am. 1999, ch. 51, § 3, p. 115.

**STATUTORY NOTES**

**Cross References.**

Employers to make and record statements for protection of laborers, §§ 44-501 and 44-502.

**Compiler's Notes.**

This section was formerly compiled as § 45-601.

Former § 45-602 was amended and redesignated as § 45-603 by § 3 of S.L. 1989, ch. 280.

**CASE NOTES**

**Constitutionality.**

**Purpose.**

**Constitutionality.**

Defendant's contention that this chapter violates the contract clause of the United States Constitution was without merit; the constitutional

impairment of contract clause protects only those contractual obligations already in existence at the time the disputed law is enacted, and Idaho's wage claim act was first passed in 1893, well before the obligation in question. *State ex rel. Dept. of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).

### **Purpose.**

The purpose of this chapter is to insure that employees receive compensation due and owing to them upon termination of their employment. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

**Cited** *St. John v. O'Reilly*, 80 Idaho 429, 333 P.2d 467 (1958); *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

**§ 45-603. Preference of wages — Death of employer.** — In case of the death of any employer, the wages of each employee for services rendered within the sixty (60) days preceding the death of the employer, not exceeding five hundred dollars (\$500), rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering the estate, and the allowance of the surviving spouse and minor children, and must be paid before any other claims against the estate of the deceased person.

**History.**

1893, p. 49, ch. 4, § 2; reen. 1899, p. 147, ch. 4, § 2; reen. R.C. & C.L., § 5146; C.S., § 7377; I.C.A., § 44-602; am. and redesign. 1989, c. 280, § 3, p. 677; am. 1999, ch. 51, § 4, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 45-602.

Former § 45-603 was redesignated as § 45-604 by § 4 of S.L. 1989, ch. 280.



**§ 45-604. Preference of wages on execution and attachment.** — In cases of executions, attachments and writs of similar nature, issued against any person or his property, except for claims for labor done, any employee who has claims against the defendant for labor done upon the property levied on, may give notice of their claim and the amount thereof, sworn to by the person making the claim, to the creditor or the creditor's agent or attorney and to the officer executing any of such writs, at any time before the actual sale of the property levied upon; and, unless such claim is disputed by the debtor or creditor, such officer must pay to such person out of the proceeds of the sale of any property on which such person has bestowed labor, the amount such person is entitled to receive for his services rendered within the sixty (60) days preceding the levy of the writ. If any or all other claims so presented and claiming preference under this section are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten (10) days for the recovery thereof, and must prosecute the action with due diligence or be forever barred from any claim of priority of payment thereof, and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action, and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

**History.**

1893, p. 49, ch. 4, § 3; reen. 1899, p. 147, ch. 4, § 3; reen. R.C. & C.L., § 5147; C.S., § 7378; I.C.A., § 44-603; redesign. 1989, c. 280, § 4, p. 677; am. 1999, ch. 51, § 5, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 45-603.

Former § 45-604 was redesignated as § 45-605 by § 5 of S.L. 1989, ch. 280.

**§ 45-605. Debtor or creditor may dispute claim.** — The debtor or creditor intending to dispute a claim presented under the provisions of [section 45-604, Idaho Code](#), shall, within ten (10) days after receiving notice of such claim, serve upon the claimant and the officer executing the writ, a statement in writing, verified by the oath of the debtor, or his agent or attorney, or the oath of the person disputing such claim, or his agent or attorney, setting forth that no part of said claim, or not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the sixty (60) days preceding the levy of the writ. If the claimant brings suit on a claim which is disputed in part only, and fails to recover a sum exceeding that which was admitted to be due, the claimant shall not recover costs, but costs shall be adjudged against the claimant.

**History.**

1893, p. 49, ch. 4, § 4; reen. 1899, p. 147, ch. 4, § 4; reen. R.C. & C.L., § 5148; C.S., § 7379; I.C.A., § 44-604; redesign. 1989, c. 280, § 5, p. 677; am. 1999, ch. 51, § 6, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 45-604.

Former § 45-605 was redesignated as § 45-615 by § 16 of S.L. 1989, ch. 280 and was subsequently repealed by S.L. 1999, ch. 51, § 16, effective July 1, 1999.

**§ 45-606. Payment of wages upon separation from employment. —**

(1) Upon layoff, or upon termination of employment by either the employer or employee, the employer shall pay or make available at the usual place of payment all wages then due the employee by the earlier of the next regularly scheduled payday or within ten (10) days of such layoff or termination, weekends and holidays excluded. However, if the employee makes written request upon the employer for earlier payment of wages, all wages then due the employee shall be paid within forty-eight (48) hours of the receipt of such request, weekends and holidays excluded.

(2) Unless exempt from the minimum wage requirements of chapter 15, title 44, Idaho Code, employees who are not being paid on an hourly or salary basis must be paid at least the applicable minimum wage for all hours worked in the pay period immediately preceding layoff or termination from employment. The minimum wage payment shall be made within the same time limitations provided for in subsection (1) of this section. Any additional wages owed to employees shall be paid by the next regularly schedule payday.

(3) The director may, upon application showing good and sufficient reasons, grant an employer a temporary extension to any time limitation provided in this section.

**History.**

I.C., § 45-606, as added by 1989, ch. 280, § 7, p. 677; am. 1996, ch. 421, § 35, p. 1406; am. 1999, ch. 51, § 7, p. 115.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-606, which comprised 1911, ch. 170, § 1, p. 565; reen. C.L., § 5148b; C.S., § 7381; I.C.A., § 44-606; am. 1982, ch. 336, § 1, p. 845 was repealed by S.L. 1989, ch. 280, § 6.

**CASE NOTES**

Contract required.

Earned paid time off.

Treble damages.

### **Contract Required.**

Where the court has determined that no enforceable employment contract ever existed, there is no contractual basis upon which a terminated employee can establish that a bonus was due from his former employer upon separation of employment. *Gray v. Tri-Way Constr. Servs.*, 147 Idaho 378, 210 P.3d 63 (2009).

### **Earned Paid Time Off.**

Where a nurse was constructively discharged from her position at a clinic, but retained a limited part-time assignment at a related hospital, the hospital was entitled to summary judgment on the nurse's wage claim under subsection (1) for wages for earned paid time off: the nurse was not entitled to payment for her earned paid time off following the constructive discharge, because the wages were only due and owing when the nurse was no longer working for the hospital on any basis. *Hurst v. IHC Health Servs.*, 817 F. Supp. 2d 1202 (D. Idaho 2011).

### **Treble Damages.**

The district court's award of treble damages to the plaintiffs was affirmed because the employer failed to tender wages that were due and owing within 48 hours of the plaintiffs' written demand for wages. *Polk v. Robert D. Larrabee Family Home Ctr.*, 135 Idaho 303, 17 P.3d 247 (2000).

**Cited** *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

### Decisions Under Prior Law

Application.

Attorney fees.

Constitutionality.

Construction.

Court costs.

Effect of tender.

Evidence and proof.

Exclusivity of remedies.

Payment by check.

Penalty.

Penalty denied in trial court.

Penalty not assignable.

Penalty not dependent on lien.

Point at which wages become due.

Rational relation to state's interest.

Trial de novo.

### **Application.**

Former similar law applied to employer of labor and not owner of property on which work was done. *Fenn. v. Latour Creek R. Co.*, 29 Idaho 521, 160 P. 941 (1916).

Former similar law did not create lien in favor of boardinghouse keeper, or person furnishing feed to horses, or for horse hire to contractor, on property of railroad. *Fenn. v. Latour Creek R. Co.*, 29 Idaho 521, 160 P. 941 (1916).

In order to come within terms of former similar law, complainant must have been discharged. *Marrs v. Oregon Short Line R.R.*, 33 Idaho 785, 198 P. 468 (1920); *Goodell v. Pope-Shenon Mining Co.*, 36 Idaho 427, 212 P. 342 (1922).

Because of the exclusive nature of former section, it may be utilized in situations where an employee voluntarily terminates his or her employment, even though former similar section was applicable only in situations where an employee is discharged. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

Former section set forth two separate situations where recovery is allowed. Under the first alternative, wages or salary are due an employee at

the time the employer discharges or lays off that employee. In the second alternative, the employee need not be discharged or laid off by their employer. The employee simply has to make a demand for wages or salary due and owing to him under his contract of employment. *Kalac v. Canyon County*, 119 Idaho 650, 809 P.2d 511 (Ct. App. 1990).

### **Attorney Fees.**

A demand in writing for wages due as required by former section was made as shown by the record in action for wages with the notification that if payment was not received within five days and suit was thereafter brought, attorney fees and penalty would be sought as provided in this section and upon action being thus brought, attorneys fees in the amount of \$700 were stipulated and agreed upon. *O'Harrow v. Salmon River Uranium Dev., Inc.*, 84 Idaho 427, 373 P.2d 336 (1962).

### **Constitutionality.**

Former similar law was legitimate exercise of police power of state, and was not an infringement upon the liberty of contract in respect to labor, and did not deprive employer or employee of the liberty or right to enter into any contract, nor take property from employer without due process of law, nor single out any particular class of debtors or individuals, and was not unconstitutional as being in contravention of Art. I, § 10 of the Constitution of the United States, or of § 1 of the Fourteenth Amendment to the Constitution of the United States, or of Idaho Const., Art. I, §§ 13 and 16. *Olson v. Idora Hill Mining Co.*, 28 Idaho 504, 155 P. 291 (1916); *Marrs v. Oregon Short Line R.R.*, 33 Idaho 785, 198 P. 468 (1921).

### **Construction.**

It was not the intention of legislature to penalize employer for failing to pay an unjust debt, nor for failure to pay when discharged laborer, after demanding payment, prevents compliance with demand by his own conduct, nor to deny or preclude right of employer to interpose any valid counterclaim or defense to claim of such laborer. *Olson v. Idora Hill Mining Co.*, 28 Idaho 504, 155 P. 291 (1916); *Goodell v. Pope-Shenon Mining Co.*, 36 Idaho 427, 212 P. 342 (1922).

Former similar law did not require that demand be made in writing or that any amount should be named by claimant. *Marrs v. Oregon Short Line*

R.R., 33 Idaho 785, 198 P. 468 (1921).

It was the purpose of former similar law to impose penalty upon employer in case of his failure to pay employee wages earned when due, after proper demand has been made therefor. *Robinson v. St. Maries Lumber Co.*, 34 Idaho 707, 204 P. 671 (1921); *Goodell v. Pope-Shenon Mining Co.*, 36 Idaho 427, 212 P. 342 (1922).

When a man employed as manager of a service station was discharged and not paid either his salary or commissions due, he was entitled to recover his salary, commissions and salary for the 30 day period following his discharge. *Kingsford v. Bennion*, 68 Idaho 501, 199 P.2d 625 (1948).

### **Court Costs.**

Employer in suit to recover wages, penalties and attorney fees was liable for court costs where tender of amount of wages due was not paid into court. *Lindsey v. McCatron*, 78 Idaho 211, 299 P.2d 496 (1956).

### **Effect of Tender.**

Running of penalty is stopped by tender of wages due. Employee, however, has right to bring suit for penalty that had accrued up to that time. *Robinson v. St. Maries Lumber Co.*, 34 Idaho 707, 204 P. 671 (1921); *Lindsey v. McCatron*, 78 Idaho 211, 299 P.2d 496 (1956).

### **Evidence and Proof.**

Where plaintiff was paid \$2.50 an hour and claimed \$3.04 an hour, but failed to prove either an agreement as to amount of wages or the standard, reasonable, or going wage for like services, evidence that employees who were members of a union, to which plaintiff did not belong, received \$3.04 an hour was insufficient to entitle plaintiff to judgment for the difference between \$2.50 and \$3.04 an hour. *Grieser v. Haynes*, 89 Idaho 198, 404 P.2d 333 (1965).

### **Exclusivity of Remedies.**

Suit for back wages along with 30 days additional wages under former similar law and suit for treble damages are mutually exclusive remedies. *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977).

Under the wage and hour law, an employee whose wages are not fully paid upon termination is entitled to alternative remedies; one remedy is to recover damages for a 30-day period after the date of termination from employment, and the other remedy is to recover, as damages, treble the amount of wages found due and owing — these remedies, however, are mutually exclusive. *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

### **Payment by Check.**

Checks of employer constituted the equivalent of cash where employer always paid by check and employee had accepted payment by check prior to his layoff or discharge. *Lindsey v. McCatron*, 78 Idaho 211, 299 P.2d 496 (1956).

### **Penalty.**

The amount paid in case of “such default” of payment of wages by employer is classified as a penalty. *Lindsey v. McCatron*, 78 Idaho 211, 299 P.2d 496 (1956).

### **Penalty Denied in Trial Court.**

Where plaintiff brings an action seeking to recover wages and penalty for nonpayment, and the trial court holds against him with respect to the penalty for such nonpayment, and defendant appeals, the supreme court will not reverse the ruling of the court on denial of the penalty. *People ex rel. Heartburg v. Interstate Eng'g. & Constr. Co.*, 58 Idaho 457, 75 P.2d 997 (1937).

### **Penalty Not Assignable.**

Right to recover penalty is personal and cannot be assigned. *Robinson v. St. Maries Lumber Co.*, 34 Idaho 707, 204 P. 671 (1921).

### **Penalty Not Dependent on Lien.**

Where plaintiff sought to enforce farm laborer's lien and also to hold owner liable for penalty under former similar law, personal judgment against defendant could be entered, although proof of lien failed. *Backman v. Douglas*, 46 Idaho 671, 270 P. 618 (1928).

### **Point at Which Wages Become Due.**



It would be unreasonable to conclude an employee's wages do not become due until after he has completed the employer's grievance proceedings. Such an interpretation of former section would compromise the purpose of the Idaho wage claim statutes — to compensate terminated employees as soon as possible. *Kalac v. Canyon County*, 119 Idaho 650, 809 P.2d 511 (Ct. App. 1990).

### **Rational Relation to State's Interest.**

The penalty provisions of the wage and hour law are rationally related to the state's overall interest in protecting wage earners. *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

### **Trial De Novo.**

Where plaintiff sued defendants in probate court for wages, attorney fees, and penalty based on joint liability of defendants as partners, but recovered judgment against one defendant only, and plaintiff appealed to district court the whole case was before the district court for a trial de novo. *Davis v. Parkin*, 75 Idaho 266, 270 P.2d 1007 (1954).

**§ 45-607. Penalty for failure to pay.** — Whenever an employer fails to pay all wages then due an employee at the times due under [section 45-606, Idaho Code](#), then the employee's wages shall continue at the same rate as if services had been rendered in the manner as last employed until paid in full or for fifteen (15) days, whichever is less. However, in no event can the maximum penalty exceed seven hundred fifty dollars (\$750), and if the full amount of the wages are paid prior to the filing of a lien pursuant to [section 45-620, Idaho Code](#), the maximum penalty shall not exceed five hundred dollars (\$500).

Any employee who secretes or absents himself to avoid payment, or refuses to receive payment when made available as provided for in [section 45-606, Idaho Code](#), shall not be entitled to any penalty under this chapter.

#### **History.**

1911, ch. 170, § 2, p. 565; reen. C.L., § 5148c; C.S., § 7382; I.C.A., § 44-607; am. 1989, ch. 280, § 8, p. 677; am. 1996, ch. 165, § 1, p. 547; am. 1999, ch. 51, § 8, p. 115.

### **CASE NOTES**

[Exclusivity of remedies.](#)

[Purpose.](#)

[Rational relation to state's interest.](#)

#### **Exclusivity of Remedies.**

Under the wage and hour law, an employee whose wages are not fully paid upon termination is entitled to alternative remedies; one remedy is to recover damages for a 30-day period after the date of termination from employment, and the other remedy is to recover, as damages, treble the amount of wages found due and owing — these remedies, however, are mutually exclusive. [De Witt v. Medley, 117 Idaho 744, 791 P.2d 1323 \(Ct. App. 1990\).](#)

[Purpose.](#)

The penalty provisions of the wage and hour law serve as a means to compensate an employee for the time and expense of securing unpaid wages and to encourage employers to tender those wages before the employee has to resort to the courts to secure payment. *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

#### **Rational Relation to State's Interest.**

The penalty provisions of the wage and hour law are rationally related to the state's overall interest in protecting wage earners. *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

**Cited** *Maroun v. Wyreless Sys.*, 141 Idaho 604, 114 P.3d 974 (2005).

**§ 45-608. Pay periods — Penalty.** — (1) Employers shall pay all wages due to their employees at least once during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks without charge to the employee. Nothing contained herein shall prohibit an employer from depositing wages due or to become due or an advance of wages to be earned in an account in a bank, savings and loan association or credit union of the employee's choice, provided that the employee has voluntarily authorized such deposit. If the employee revokes such authorization for deposit, it shall be deemed terminated and the provisions herein relating to the payment of wages shall apply.

(2) The end of the pay period for which payment is made on a regular payday shall be not more than fifteen (15) days before such regular payday; provided that if the regular payday falls on a nonworkday payment shall be made on a preceding workday.

(3) The director may, upon application showing good and sufficient reasons, permit an employer to withhold payment of wages more than the fifteen (15) day period as specified in subsection (2) of this section.

(4) The director may, pursuant to his authority, levy a civil penalty upon any employer who has failed to obtain the exemption provided in subsection (3) of this section and who has been determined to have undertaken a consistent pattern of untimely payment of wages to his employees. Such penalty shall not exceed five hundred dollars (\$500) for such employer per pay period.

### **History.**

**I.C., § 45-610**, as added by 1967, ch. 436, § 2, p. 1469; am. 1974, ch. 39, § 73, p. 1023; am. 1985, ch. 132, § 1, p. 326; am. and redesign. 1989, c. 280, § 9, p. 677; am. 1999, ch. 51, § 9, p. 115.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 45-610.

Former § 45-608 was amended and redesignated as § 45-614 by § 15 of S.L. 1989, ch. 280.

The amending clause of section 2 of S.L. 1965, ch. 436, read: “Section 2. That chapter 6 of title 44, Idaho Code, be, and the same is hereby amended by adding a new section thereto, following section 45-609, to be known and designated as section 45-610, and to read as follows.”

## CASE NOTES

Application.

No contract of employment.

Wages.

Wages due.

Application.

Where employer insured employee's life, the policies to vest in employee if employer went out of business, these benefits were not attributed to, or earned in a specific pay period, but were earned over the entire course of the employment relationship, and this section applies to an action to recover retirement benefits such as those in this case. *Latham v. Haney Seed Co.*, 119 Idaho 412, 807 P.2d 630 (1991).

The Idaho wage claim act requires an employer only to pay a minimum wage for all hours worked and to pay employees at least monthly. Beyond that, the act does not place any limitations on the ability of the employer and employee to contract for the terms of the employee's compensation. *Savage v. Scandit Inc.*, 163 Idaho 637, 417 P.3d 234 (2018).

No Contract of Employment.

Plaintiff was not entitled to wages for duties performed as acting lieutenant/jail commander before sheriff appointed him to that position where county commissioners had not approved the position; sheriff did not have the power to contract with plaintiff for a position that the commissioners had not created. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).

## **Wages.**

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. *Paolini v. Albertson's, Inc.*, 143 Idaho 547, 149 P.3d 822 (2006).

## **Wages Due.**

This section applies to all wages due during the month. Wages earned over a longer period of time, such as an annual bonus based upon net profits, will come due during a specific calendar month and are also covered by this section. *Gray v. Tri-Way Constr. Servs.*, 147 Idaho 378, 210 P.3d 63 (2009).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Idaho vs FLSA: Department of Corrections Must Change to Comply with Federal Law, Comment. 52 Idaho L. Rev. 975 (2016).

**§ 45-609. Withholding of wages.** — (1) No employer may withhold or divert any portion of an employee's wages unless:

(a) The employer is required or empowered to do so by state or federal law; or (b) The employer has a written authorization from the employee for deductions for a lawful purpose.

(2) An employer shall furnish each employee with a statement of deductions made from the employee's wages for each pay period such deductions are made. The willful failure of any employer to comply with the provisions of this subsection shall constitute a misdemeanor.

**History.**

**I.C., § 45-611**, as added by 1967, ch. 436, § 3, p. 1469; am. and redesign. 1989, c. 280, § 10, p. 677; am. 1999, ch. 51, § 10, p. 115.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Compiler's Notes.**

This section was formerly compiled as § 45-611.

Former § 45-609 was amended and redesignated as § 45-601 by § 1 of S.L. 1989, ch. 280.

The amending clause of section 3 of S.L. 1967, ch. 436, read: "Section 3. That chapter 6 of title 44, Idaho Code, be, and the same is hereby amended by adding a new section thereto, following section 45-610, to be known and designated as section 45-611, and to read as follows."

**CASE NOTES**

[Deduction of wages.](#)

[Employment at will.](#)

Evidence of illegal withholding.

Ground for terminating employment.

Written authorization.

### **Deduction of Wages.**

Where an employee quit rather than work under a procedure whereby money would be deducted from her wages until she redid work to her employer's satisfaction, substantial evidence supported the industrial commission's findings that she quit for good cause and was eligible for unemployment benefits. *Wood v. Quali-Dent Dental Clinics*, 107 Idaho 1020, 695 P.2d 405 (1985).

### **Employment at Will.**

The "employment at will" doctrine is applicable solely to actions for wrongful discharge, not to actions for unemployment compensation benefits. *Stevenson v. TR Video, Inc.*, 112 Idaho 1081, 739 P.2d 380 (1987).

### **Evidence of Illegal Withholding.**

Sufficient facts were placed before the industrial commission to raise the issue of an illegal withholding under this section, where the employee alleged the existence of a binding oral contract between himself and his employer concerning his wages, he alleged a unilateral breach of that contract by his employer which resulted in a withholding of a portion of his wages due under the terms of the oral contract, and the employer took the position before the appeals examiner that his actions changing the oral agreement were mandated by a federal labor law. *Stevenson v. TR Video, Inc.*, 112 Idaho 1081, 739 P.2d 380 (1987).

### **Ground for Terminating Employment.**

An employer's violation of this section gives the aggrieved employee good cause as a matter of law for leaving his employment if the amount withheld was not trivial, and the employee's attempt to settle the matter with his employer was rebuffed. *Stevenson v. TR Video, Inc.*, 112 Idaho 1081, 739 P.2d 380 (1987).

### **Written Authorization.**



When an employer, without employee's written authorization, withheld amounts from employee's wages representing the value of supplies and building materials employee had received from employer, the withholding was in violation of employee's statutory rights. *Smith v. Johnson's Mill*, 96 Idaho 760, 536 P.2d 755 (1975).

**§ 45-610. Records to be kept by employer — Notice to employees. —**

(1) Employment records must be maintained for a minimum period of three (3) years from the last date of the employee's service.

(2) Every employer shall give notice to its employees at the time of hiring of the rate of pay and the usual day of payment, and shall provide such information in writing to the employee upon the employee's request.

(3) Every employer shall give notice to its employees of any reduction in wages prior to the work being performed and shall provide such information in writing to the employee upon the employee's request.

**History.**

I.C., § 45-610, as added by 1989, ch. 280, § 11, p. 677; am. 1999, ch. 51, § 11, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 45-610 was amended and redesignated as § 45-608 by § 9 of S.L. 1989, ch. 280.

**§ 45-611. Wages that are in dispute.** — (1) In case of a dispute as to the amount of wages due an employee, the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed. Whenever an employer pays all wages not in dispute within the time limits set forth in [section 45-606, Idaho Code](#), no penalties may be assessed under this chapter, unless it can be shown that the remaining balance of wages due were withheld willfully, arbitrarily and without just cause.

(2) The acceptance by an employee of a check with any restrictive endorsement as payment under this section shall not constitute a release or accord and satisfaction with respect to the disputed amount.

**History.**

[I.C., § 45-611](#), as added by 1989, ch. 280, § 12, p. 677; am. 1999, ch. 51, § 12, p. 115.

## STATUTORY NOTES

**Compiler's Notes.**

Former § 45-611 was amended and redesignated as § 45-609 by § 10 of S.L. 1989, ch. 280.

## CASE NOTES

[Award by court.](#)

[Legislative intent.](#)

[Award by Court.](#)

When a statute allows an award beyond actual damages, the court must decide whether the award is intended to be a penalty or compensation. If it is intended to be a penalty, the statute's requirements must be strictly construed; if it is intended to be compensatory, the statutory requirements

are not to be strictly construed. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).

**Legislative Intent.**

The legislature did not intend the word “penalties”, as used in this section, to refer to the award of treble damages. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).

**§ 45-612. Filing false claim — Penalty.** — (1) Any person making a false claim for wages or other compensation under this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punishable by confinement in the county jail for a period not to exceed six (6) months, or by a fine, not to exceed one thousand dollars (\$1,000), or both.

(2) Any employee initiating a civil proceeding to collect unpaid wages or other compensation, which is based in whole or in part on a false claim which the employee knew to be false at the time the employee brought the action, shall be liable for attorney's fees and costs incurred by the employer in defending against the false claim. Proof of a criminal conviction under subsection (1) of this section shall not be required for recovery of the fees and costs provided for in this subsection.

**History.**

**I.C., § 45-612**, as added by 1996, ch. 89, § 1, p. 270; am. 1999, ch. 51, § 13, p. 115.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-612, which comprised **I.C., § 45-612**, as added by 1967, ch. 436, § 4, p. 1469, was repealed by S.L. 1989, ch. 280, § 13.

**CASE NOTES**

**Litigation of Issue.**

In an employee's action against an employer to recover a commission on a condominium sale, after determining that judgment was properly rendered to the employer, the court declined to award attorney fees to the employer because the question of the falsity of the employee's claim had not been litigated. **Bakker v. Thunder Spring-Wareham, LLC, 141 Idaho 185, 108 P.3d 332 (2005).**

**Cited** Zattiero v. Homedale Sch. Dist. No. 370, 137 Idaho 568, 51 P.3d 382 (2002).

**§ 45-613. Discharging or retaliating against employees asserting rights under this chapter.** — No employer shall discharge or in any other manner retaliate against any employee because that employee has made a complaint to the employer, or to the department, or filed suit alleging that the employee has not been paid in accordance with the provisions of this chapter, or because the employee has testified or may be about to testify in an investigation or hearing undertaken by the department. The provisions of this section shall not be construed to otherwise restrict the discipline or termination of an employee.

**History.**

I.C., § 45-613, as added by 1989, ch. 280, § 14, p. 677; am. 1996, ch. 421, § 36, p. 1406; am. 1999, ch. 51, § 14, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 45-613 was amended and redesignated as § 45-616 by § 17 of S.L. 1989, ch. 280.

**CASE NOTES**

**Stock Options.**

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, the United States court of appeals for the Ninth Circuit requested the Idaho supreme court to accept certification of a question asking whether stock options can be wages. *Paolini v. Albertson's Inc.*, 418 F.3d 1023 (9th Cir. 2005).

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. *Paolini v. Albertson's, Inc.*, 143 Idaho 547, 149 P.3d 822 (2006).

District court properly granted summary judgment based on a wrongful discharge claim under Idaho's wage laws as the facts, which involved the denial of accelerated vesting with respect to stock options, did not support a wrongful discharge claim because stock options did not constitute wages. [Paolini v. Albertson's Inc.](#), 482 F.3d 1149 (9th Cir. 2007).



**§ 45-614. Collection of wages — Limitations.** — Any person shall have the right to collect wages, penalties and liquidated damages provided by any law or pursuant to a contract of employment, but any action thereon shall be filed either with the department or commenced in a court of competent jurisdiction within two (2) years after the cause of action accrued, provided, however, that in the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within twelve (12) months from the accrual of the cause of action. It is further provided that if any such cause of action has accrued prior to the effective date of this act, and is not barred by existing law, action thereon may be commenced within six (6) months from the effective date of this act. In the event an action is not commenced as herein provided, any remedy on the cause of action shall be forever barred.

### **History.**

I.C.A., § 44-608, as added by 1947, ch. 36, § 1, p. 36; am. and redesign. 1989, ch. 280, § 15, p. 677; am. 1999, ch. 51, § 15, p. 115; am. 2019, ch. 93, § 1, p. 338.

## **STATUTORY NOTES**

### **Amendments.**

The 2019 amendment, by ch. 93, substituted “twelve (12) months from the accrual” for “six (6) months from the accrual” near the end of the first sentence.

### **Compiler’s Notes.**

This section was formerly compiled as § 45-608.

The phrase “the effective date of this act” in the next-to-last sentence refers to the effective date of S.L. 1947, Chapter 36, which was effective February 8, 1947.

## CASE NOTES

Claims for additional salary.

Instructions.

Issues.

Overtime.

Remuneration of partners.

Severance pay.

When statute begins to run.

### **Claims for Additional Salary.**

The proviso in the first sentence of this section refers to a claim for additional salary for a specific pay period from which an employee has already received some payment of salary or wages; the term pay period does not refer to the entire course of an employment relationship. *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984).

### **Instructions.**

Jurors should have been instructed by the court as to whether defendant's first four payments to plaintiff constituted payment of wages for the pay periods covered by such payments and whether the action by plaintiff was for additional wages claimed for those pay periods and consequently was barred by the 6-months [now 12-months] provision; the jurors should have been instructed if they found the first four payments were on account as claimed by plaintiff, then his action was not barred but if such payments were made in the manner claimed by defendant, then the action as to the four pay periods was barred. *Anderson v. Lee*, 86 Idaho 220, 386 P.2d 54 (1963).

Where employment agreement which set an agreed hourly wage was indefinite as to duration and time for payment of wages, it was a question of fact whether employer's first four payments constituted wages for the pay periods, so as to render employee's action for additional wages claimed for those four pay periods barred by the six-month [now twelve-month] statute

of limitations; and jurors should have been so instructed. [Anderson v. Lee](#), 86 Idaho 300, 386 P.2d 54 (1963).

### **Issues.**

Where, more than six months but less than two years after his employment was terminated, employee brought action against employer for wages, and employer counterclaimed and alleged action was barred by statute of limitations under this section, whether payments made by employer were for all work up to each respective payment and made the six-month [now twelve-month] statute of limitations on additional wage claims applicable, or whether they were on account, for no particular period, making the limitation statute inapplicable, were issues of fact. [Anderson v. Lee](#), 86 Idaho 300, 386 P.2d 54 (1963).

### **Overtime.**

Where the school district could have compensated the employee for his overtime work any time during the term of his contract, it was not until that contract expired that his cause of action then accrued, for it is only then that he knew that he would not be compensated for the unpaid overtime. [Gilbert v. Moore](#), 108 Idaho 165, 697 P.2d 1179 (1985).

Where the longstanding practice of the county was to pay all overtime accrued upon termination, and the sheriff's action was filed within one month of his termination of employment, the county's assertion of the defense of failure to file within the statutory period was without merit. [Schoonover v. Bonner County](#), 113 Idaho 916, 750 P.2d 95 (1988).

### **Remuneration of Partners.**

Partner's claim for "unpaid additional wages" was subject to the six-month [now twelve-month] limitation period expressed in this section. [Callenders, Inc. v. Beckman](#), 120 Idaho 169, 814 P.2d 429 (Ct. App. 1991).

### **Severance Pay.**

A claim for severance pay is a component of the compensation in an employment agreement since severance pay is not a mere gratuity; thus, a claim for severance pay comes within the parameters of this section. [Johnson v. Allied Stores Corp.](#), 106 Idaho 363, 679 P.2d 640 (1984).

Because severance pay is not attributed to, or earned in a specific pay period, but, is earned over the entire course of the employment relationship, the six-month [now twelve-month] limitation period is inapplicable to a claim for severance pay; rather, the two-year period is applicable. *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984).

Employee had a right to collect his severance pay upon either his retirement or involuntary termination and where suit for severance pay was initiated less than two years from employee's involuntary termination, the claim was not barred by the two-year limitation period. *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984).

### **When Statute Begins to Run.**

If the payments made by defendant were on account as claimed by plaintiff employee, then no particular pay period was covered by such payments, and the six-month [now twelve-month] limitation for commencing suit would not apply because in such case plaintiff would not be claiming additional wages for the pay period covered by any of the payments made; his claim, in that case, would be for an unpaid balance applicable to the entire period of his employment, but if, on the other hand, such four payments were to cover the full amount earned by plaintiff up to the time of making the payments, plaintiff's action would be barred by the six-months [now twelve-months] provision. *Anderson v. Lee*, 86 Idaho 220, 386 P.2d 54 (1963).

Where one was employed from calendar year to calendar year at a fixed salary with a bonus of 25% of profits of business at end of each calendar year and was wrongfully discharged in February, the claim for salary to the end of the year and the bonus for such year was governed by the two-year limitation and not the six-month [now twelve-month] limitation. *Thomas v. Ballou-Latimer Drug Co.*, 92 Idaho 337, 442 P.2d 747 (1968).

A cause of action accrues under this section when an employee has a right to collect the salary or wages, etc., that are allegedly owed to him. *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984).

Six-month [now twelve-month] limitations period applied to a former employee's breach of contract and § 45-606(1) claims where the complaint specifically requested additional wages for specified periods of employment

in the form of overtime and double time, as well as additional accrued vacation pay, which could be characterized as wages owed but unpaid. *Wood v. Kinetic Sys.*, 766 F. Supp. 2d 1080 (D. Idaho 2011).

**Cited** *Mathauser v. Hellyer*, 98 Idaho 235, 560 P.2d 1325 (1977).

**§ 45-615. Collection of wage claims by suit — Attorney's fees and costs.** — (1) As an alternative to filing a wage claim with the department, any person may assert a wage claim arising under this chapter in any court of competent jurisdiction or pursue any other remedy provided by law.

(2) Any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include all costs and attorney's fees reasonably incurred in connection with the proceedings and the plaintiff shall be entitled to recover from the defendant either the unpaid wages plus the penalties provided for in [section 45-607, Idaho Code](#); or damages in the amount of three (3) times the unpaid wages found due and owing, whichever is greater.

**History.**

[I.C., § 45-615](#), as added by 1999, ch. 51, § 17, p. 115.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-615, which comprised [I.C., § 45-615](#), as added by 1899, p. 394, § 1; reen. R.C., § 4919; am. 1915, ch. 70, § 1, p. 180; reen. C.L., § 5148a; C.S., § 7380; I.C.A., § 44-605; am. and redesign. 1989, ch. 280, § 16, p. 677; am. 1990, ch. 226, § 1, p. 603, was repealed by S.L. 1999, ch. 51, § 16, effective July 1, 1999.

**CASE NOTES**

[Attorney fees.](#)

[Treble damages.](#)

**[Attorney Fees.](#)**

With respect to his claim for \$23,077 of unpaid wages, for which he received treble damages, a former corporation employee was entitled to attorney fees incurred below and on appeal. The employee was not entitled

to attorney fees for the remainder of the claims he had raised on appeal. [Maroun v. Wyreless Sys., 141 Idaho 604, 114 P.3d 974 \(2005\)](#).

District court did not abuse its discretion in the amount of attorney fees it awarded to a former COO, where it applied the correct legal standard, analyzed each of the factors set forth in [Idaho R. Civ. P. 54\(e\)\(3\)](#), significantly reduced the number of hours billed by the COO's legal team on the grounds that the amount of billed time was shocking, factored in the company's discovery abuses and the delay due to the company's bankruptcy, and considered the fact that the COO had to defend against counter-claims that the company eventually abandoned. [Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187 \(2018\)](#).

### **Treble Damages.**

Pursuant to this section, the district court erred by not trebling the unpaid wage amount of \$23,077 in the stipulated judgment because both parties conceded that the corporation owed \$23,077 in unpaid wages and the employee had incurred the expense of instituting a lawsuit to recover his unpaid salary and that was the harm treble damages were intended to deter. [Maroun v. Wyreless Sys., 141 Idaho 604, 114 P.3d 974 \(2005\)](#).

District court properly affirmed an arbitration panel's refusal to award treble damages and attorney fees on an employee's employment agreement claim because the panel did not rule that the amount owed on the employment agreement claim constituted monies owed for unpaid wages. The arbitrators awarded the employee damages under the heading of "Wage Claim," but the mere use of that shorthand term did not suggest the panel intended the award to represent wages; instead, those damages were part of a liquidated damages provision as articulated in the employment agreement. [Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 \(2005\)](#).

Future wages are not subject to the mandatory trebling provision of the Idaho wage claim act. In distinguishing between future wages and those subject to the act, the question is whether the employee is entitled to the wages for services rendered, or whether there is more that she must do in order to be entitled to the wages. [Savage v. Scandit Inc., 163 Idaho 637, 417 P.3d 234 \(2018\)](#).

Bonuses fall under the definition of wages and are subject to the mandatory trebling statute, if they are not paid when they are due. *Savage v. Scandit Inc.*, 163 Idaho 637, 417 P.3d 234 (2018).

#### Decisions Under Prior Law

Amount of demand.

Employee.

Extinguishment of right.

Rejection of award.

Sufficiency of evidence.

Treble damages.

Trial de novo.

When fees allowable.

#### **Amount of Demand.**

Attorney fees are not awarded when the employee's written demand for past due wages exceeds the amount of wages awarded by the district court, even if the difference between the amounts is relatively minor. *Shay v. Cesler*, 132 Idaho 585, 977 P.2d 199 (1999).

#### **Employee.**

A county sheriff is not an "employee" for purposes of the attorney fees provided in this section. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

#### **Extinguishment of Right.**

Tender of amount of wages due prior to date of written demand extinguishes employee's right to attorney fees. *Lindsey v. McCatron*, 78 Idaho 211, 299 P.2d 496 (1956).

#### **Rejection of Award.**

Plaintiff's statement that he would reject an award of \$1.00 in attorney's fees, the amount originally sought, destroys the effect of the demand. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).



### **Sufficiency of Evidence.**

Evidence was sufficient to warrant a recovery for work and labor performed, so as to bring it within the terms of this section. *Harp v. Stonebraker*, 57 Idaho 434, 65 P.2d 766 (1937).

### **Treble Damages.**

The district court's award of treble damages to the plaintiffs was affirmed because the employer failed to tender wages that were due and owing within 48 hours of the plaintiffs' written demand for wages. *Polk v. Robert D. Larrabee Family Home Ctr.*, 135 Idaho 303, 17 P.3d 247 (2000).

### **Trial De Novo.**

Where plaintiff sued defendants in probate court for wages, attorney fees, and penalty based on joint liability of defendants as partners, but recovered judgment against one defendant only, and plaintiff appealed to district court the whole case was before the district court for a trial de novo. *Davis v. Parkin*, 75 Idaho 266, 270 P.2d 1007 (1954).

### **When Fees Allowable.**

Attorneys' fees cannot be allowed where demand was for amount exceeding that which could be found due for wages. *Marrs v. Oregon Short Line R.R.*, 33 Idaho 785, 198 P. 468 (1921).

Liability for treble damages did not arise from failure to pay amount demanded, but upon failure to pay any wages or salary due upon demand. *Marrs v. Oregon Short Line R.R.*, 33 Idaho 785, 198 P. 468 (1921).

In claim for wages, where no written demand is made by plaintiff, it is error to allow him attorney's fees. *Cosner v. United Mines Co.*, 33 Idaho 801, 198 P. 472 (1921).

There could be no recovery of attorney's fees unless amount sought was justly due and employee has made proper demand for such amount. *Goodell v. Pope-Shenon Mining Co.*, 36 Idaho 427, 212 P. 342 (1922).

Where in a claim for wages no demand was made in writing by discharged employee, it was error to allow attorney fees to such employee. *Kingsford v. Bennion*, 68 Idaho 501, 199 P.2d 625 (1948).

Where respondent brought suit for the recovery of his wages earned and due according to the terms of his employment and established that the amount for which he brought suit, \$543.74, was justly due less legal deductions and that tender made by appellant of \$333.14 was considerably less than that amount, and that he had made due demand for a sum not to exceed the amount found due less legal deductions, such respondent became entitled to recovery of attorneys' fees to be taxed as costs of suit. *St. John v. O'Reilly*, 80 Idaho 429, 333 P.2d 467 (1958).

A demand in writing for wages due was made as shown by the record in action for wages with the notification that, if payment was not received within five days and suit was thereafter brought, attorney fees and penalty would be sought: upon action being thus brought, attorneys' fees in the amount of \$700 were stipulated and agreed upon. *O'Harrow v. Salmon River Uranium Dev., Inc.*, 84 Idaho 427, 373 P.2d 336 (1962).

Where the respondent's demand for salary was greater than the amount to which the trial court found him to be lawfully entitled, the trial court erred in awarding attorney's fees. *Fish v. Fleishman*, 87 Idaho 126, 391 P.2d 344 (1964).

Where the wage earner's demand in writing far exceeded the amounts found by the trial court to be due and owing, the trial court did not err by failing to award attorney's fees. *Gano v. Air Idaho, Inc.*, 99 Idaho 720, 587 P.2d 1255 (1978).

Where the amount of damages sought by the employee is greater than the amount the trial court finds him to be lawfully entitled, the trial court could not award attorney fees. *Neal v. Idaho Forest Indus., Inc.*, 107 Idaho 681, 691 P.2d 1296 (Ct. App. 1984).

No entitlement to attorney fees existed under this section where the wages awarded were less than the amount demanded. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

**§ 45-616. Enforcement.** — (1) The director shall enforce and administer the provisions of this chapter. The director is empowered to hold hearings and otherwise investigate violations or alleged violations of this chapter and any rules promulgated pursuant thereto, and to issue orders for administrative remedies as authorized.

(2) The director is empowered to enter and inspect places, question employees, and investigate facts, conditions, or matters as the director may deem appropriate to determine whether any person has violated any provision of this chapter or any rule promulgated thereunder or which may aid in the enforcement of the provisions of this chapter.

(3) The director shall have the power to administer oaths and examine witnesses under oath or otherwise, and issue subpoenas to compel the attendance of witnesses and the production of any evidence deemed necessary in the administration of this chapter.

(4) If any person fails to comply with any subpoena lawfully issued, it shall be the duty of the district court, on application by the director, to compel compliance by citation for contempt.

(5) An employer shall furnish to the department the information the department is authorized to acquire under this section when the request is submitted in writing.

(6) The department shall attempt for a period of not less than two (2) years from the date of collection, to make payment of wages collected under this chapter to the person entitled thereto. Wage claims collected by the department that remain unclaimed for a period of more than two (2) years from the date collected shall on June 30th of each year be forfeited and retained in the department's account and used for the administration of this chapter.

### **History.**

**I.C., § 45-613**, as added by 1967, ch. 436, § 5, p. 1469; am. 1974, ch. 39, § 74, p. 1023; am. and redesign. 1989, ch. 280, § 17, p. 677; am. 1999, ch. 51, § 18, p. 115.

## STATUTORY NOTES

### **Cross References.**

Contempt proceedings, § 7-601 et seq.

### **Compiler's Notes.**

This section was formerly compiled as § 45-613.

The amending clause of section 5 of S.L. 1967, ch. 436, read: "Section 5. That chapter 6 of title 44, Idaho Code, be, and the same is hereby amended by adding a new section thereto, following section 45-612, to be known and designated as section 45-613, and to read as follows." See Compiler's note under § 45-609.

## CASE NOTES

### **Preliminary Determination of Work Relationship.**

In order to proceed with a wage collection, the department of labor and industrial services [now department of labor] must determine whether wages are due and owing to the claimant; inherent in making such a determination is the department's resolution of whether the parties maintained an employer/employee relationship, as such a relationship is a necessary subsidiary fact which must be established before the department may proceed; accordingly, the department is authorized to make that preliminary determination. *State ex rel. Dept. of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).

**§ 45-617. Administrative proceedings for wage claims.** — (1) Wage claims filed with the department, excluding potential penalties, are limited by the same dollar amount that limits actions before the small claims department of the magistrate's division of the district court.

(2) The contested case provisions of the Idaho administrative procedures act, chapter 52, title 67, Idaho Code, are inapplicable to proceedings involving wage claims under this chapter.

(3) Once a wage claim has been properly filed with the department, the provisions of this section shall provide the exclusive remedy for resolving the wage claim. If at any time after the filing of the wage claim the department determines that it lacks jurisdiction over the wage claim, the department shall provide written notification of its determination to the claimant and the employer. The claimant may then assert the wage claim in any court of competent jurisdiction. In the event the department determines that it lacks jurisdiction over the wage claim, the limitation periods provided for in [section 45-614, Idaho Code](#), shall be tolled from the date the wage claim was filed with the department until the date notice that the department lacks jurisdiction is mailed to the claimant, as provided in subsection (5) of this section.

(4) A department compliance officer shall examine wage claims filed with the department and, on the basis of the facts found, shall determine whether the wage claimant is entitled to an award for unpaid wages and penalties. If the compliance officer is unable to determine whether wages and penalties are owed, the claim may be referred to a hearing officer for a determination. The department may adjust the amount of penalties awarded for an employer's failure to comply with the requirements of [section 45-606, Idaho Code](#). The department may award no penalty, or may award a penalty in any amount up to the maximum amount allowed under [section 45-607, Idaho Code](#). No penalty shall be awarded by the department unless a specific finding is made that wages were withheld willfully, arbitrarily and without just cause. The department's determination shall include findings of fact and conclusions of law. Before the determination becomes final or an appeal is filed, the compliance or hearing officer that issued the

determination may, on their own motion, issue a revised determination. The determination or revised determination shall become a final determination unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by the claimant or the employer with the department. If an appeal is not timely filed, the amount awarded by a final determination shall become immediately due and payable to the department. A final determination may be enforced by the department in accordance with [section 45-618, Idaho Code](#).

(5) The claimant and the employer shall be entitled to prompt service of notice of determinations and decisions. A notice shall be deemed served if delivered to the person being served or if mailed to his last known address. Service by mail shall be deemed complete on the date of mailing. The date indicated on department determinations or decisions as the “date of mailing” shall be presumed to be the date the document was deposited in the United States mail, unless otherwise shown by a preponderance of competent evidence.

(6) An appeal from a wage claim determination shall be in writing, signed by the appellant or the appellant’s representative and shall contain words that, by fair interpretation, request the appeal process for a specific determination of the department. The appeal may be filed by personal delivery, by mail, or by fax to the wage and hour section of the department at the address indicated on the wage claim determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the wage and hour section by 5:00 p.m. on a business day shall be deemed filed on that date. A faxed appeal that is received by the wage and hour section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

(7) To hear and decide appeals from determinations, the director shall appoint appeals examiners who have been specifically trained to hear wage claims. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination involved, after affording the claimant and the employer reasonable opportunity for a fair hearing, or may refer a matter back to the compliance or hearing officer for further action. The appeals examiner shall notify the claimant and the employer of his

decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, either upon application for rehearing by the claimant, the employer, or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed wage claim. All testimony at any hearing shall be recorded. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If the claimant or the employer formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless the claimant or the employer, within fourteen (14) days after service of the decision of the appeals examiner, seeks judicial review pursuant to [section 45-619, Idaho Code](#), or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final and the amount awarded by the decision shall become immediately due and payable to the department. A decision that has become final may be enforced by the department according to [section 45-618, Idaho Code](#).

(8) No person acting on behalf of the director shall participate in any case in which he has a direct or indirect personal interest.

(9)(a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination or decision of the appeals examiner which has become final, shall be conclusive for all the purposes of this chapter as between the claimant and the employer who had notice of such determination or decision. Subject to judicial review as set forth in this chapter, any determination or decision shall be conclusive for all purposes of this chapter and shall not be subject to collateral attack irrespective of notice.

(b) No finding of fact or conclusion of law contained in a determination or decision rendered pursuant to this chapter by an appeals examiner, a court, or any other person authorized to make such determinations shall



have preclusive effect in any other action or proceeding, except proceedings that are brought:

- (i) Pursuant to this chapter;
- (ii) To collect wage claims; or
- (iii) To challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

### **History.**

I.C., § 45-617, as added by 1999, ch. 51, § 20, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

Jurisdiction of small claims department, § 1-2301.

### **Prior Laws.**

Former § 45-617, which comprised I.C., § 45-617, as added by 1967, ch. 436, § 6, p. 1469; am. 1971, ch. 80, § 1, p. 177; am. 1974, ch. 39, § 75, p. 1023; am. 1977, ch. 141, § 1, p. 302; am. and redesign. 1989, ch. 280, § 18, p. 677; am. 1990, ch. 226, § 2, p. 603; am. 1996, ch. 421, § 37, p. 1406, was repealed by S.L. 1999, ch. 51, § 19, effective July 1, 1999.

### **Compiler's Notes.**

For further information on Idaho department of labor farmworker services, see <https://www.labor.idaho.gov/dnn/Job-Seekers/Farmworker-Services>.

## **CASE NOTES**

Award beyond damages.

Cash value of insurance policy.

Commissions.

Exclusivity of remedies.

Grounds.



Independent contractors.

Payment for earned vacation.

Preliminary determination of work relationship.

Proof necessary.

Tender of wages.

Treble damages.

When action accrues.

Who may sue.

### **Award Beyond Damages.**

When a statute allows an award beyond actual damages, the court must decide whether the award is intended to be a penalty or compensation. If it is intended to be a penalty, the statute's requirements must be strictly construed; if it is intended to be compensatory, the statutory requirements are not to be strictly construed. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).

### **Cash Value of Insurance Policy.**

In action for breach of employment contract, it was error for the trial judge to treat the cash value of the life insurance policy as wages, where the proceeds of the policy were to be paid to the employee at retirement or to his heirs upon his death. The policy was a fixed benefit of employment status, and, as such, it was not compensation earned in increments as services were performed, unlike wages, and also unlike compensation paid in direct consideration of services rendered, in amounts over and above an employee's regular paychecks. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).

### **Commissions.**

"Wages" include commissions. *Smith v. Idaho Peterbilt, Inc.*, 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984).

### **Exclusivity of Remedies.**

Suit for treble damages and suit for back wages along with 30 days additional wages were mutually exclusive remedies. *Lawless v. Davis*, 98

Idaho 175, 560 P.2d 497 (1977).

The farm labor lien statute, § 45-301 et seq, provides a lien on the crop as security for the payment of any judgment awarded; wage and hour laws, on the other hand, provide for the measure of damages to be awarded. Neither the language nor the titles of the separate acts suggested that the remedies under the acts were mutually exclusive; the two statutes were intended to fulfill different purposes. *Sage v. Richtron, Inc.*, 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

### **Grounds.**

A request for attorney fees cannot be granted under § 12-120 when the underlying cause of action is a wage claim brought pursuant to this section. *Hutchison v. Anderson*, 130 Idaho 936, 950 P.2d 1275 (Ct. App. 1997).

### **Independent Contractors.**

Contracts between co-counsel and the county established that they served as independent contractors doing work that was limited in scope and duration, and as such they were paid a fee for their services as opposed to wages. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

### **Payment for Earned Vacation.**

Payment for earned vacation was directly analogous to wages. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).

### **Preliminary Determination of Work Relationship.**

In order to proceed with a wage collection, the department of labor and industrial services [now department of labor] must determine whether wages are due and owing to the claimant; inherent in making such a determination is the department's resolution of whether the parties maintained an employer/employee relationship, as such a relationship is a necessary subsidiary fact which must be established before the department may proceed; accordingly, the department is authorized to make that preliminary determination. *State ex rel. Dept. of Labor & Indus. Servs. v. Hill*, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).

### **Proof Necessary.**

In order to recover treble damages, it need not be shown that an employer withholding wages acted with malice, wantonness, fraud or oppression, but it must be shown that the wages were wrongfully withheld. *Gano v. Air Idaho, Inc.*, 99 Idaho 720, 587 P.2d 1255 (1978).

The liability of the employer for treble damages was not dependent upon a finding that the employer “wrongfully” withheld the wages due; the employee only had to show that his wages were due and unpaid. *Smith v. Idaho Peterbilt, Inc.*, 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984).

### **Tender of Wages.**

The treble damages penalty could not apply when a tender was made of the full amount of the wages due. *Smith v. Idaho Peterbilt, Inc.*, 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984).

A tender of part of the wages ultimately found due should stop the running of the treble damages penalty as to the portion of the wages reflected by the tender, where such a partial tender is made unconditionally to the employee. Only if the tender is made in fact and rejected will the employer be completely protected from the invocation of the penalty statute. *Smith v. Idaho Peterbilt, Inc.*, 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984).

A pre-complaint offer of wages to employees must take the form of an actual tender in order to escape liability by the employer for the treble damage penalty. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

### **Treble Damages.**

In suit for wages wrongfully withheld, treble damages must have been awarded whenever it was proved that the wages have been wrongfully withheld. *Goff v. H.J.H. Co.*, 95 Idaho 837, 521 P.2d 661 (1974).

Since the status of public officer cannot serve to exempt him from a duty to mitigate, while, at the same time, allowing him the benefits of a statute designed to protect wage earners who do have such a duty, an award of damages to a police chief who was wrongfully discharged could not be trebled. *Buckalew v. City of Grangeville*, 100 Idaho 460, 600 P.2d 136 (1979).

Where an employer was preparing to sell a division of his company within 60 days and promised his employee a bonus of 60 days' additional salary if the employee would remain with the company until the division was sold, such 60-day "pay bonus" was a wage; thus, employer's refusal to pay such bonus subjected the employer to treble damages. *Neal v. Idaho Forest Indus., Inc.*, 107 Idaho 681, 691 P.2d 1296 (Ct. App. 1984).

To recover treble damages, a showing of wrongfulness was not required; neither was it necessary to show bad faith on the part of the employer. *Sage v. Richtron, Inc.*, 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

Where the deputy sheriff was not entitled to salary as an incident of his right to his office, and his status was as "employee at will," he was entitled to recover treble damages. *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

In action for breach of employment contract, there was no procedural error in the trial judge's decision to apply treble damages, even though it was not pleaded by either party, nor was it otherwise raised as an issue at trial, where the complaint prayed for monetary relief from breach of an employment contract, and this was sufficient to place the employer on notice that unpaid wages, or items analogous to wages, could be awarded. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).

In action for breach of employment contract, the employee was entitled to prejudgment interest only on the untrebled portion of the vacation pay due him because the additional amount produced by trebling became "due" only when judgment was entered. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).

A deferral account, the purpose of which was to provide an executive employee with income even when the employer did not produce a pre-tax profit for the month, was not an agreement within the scope of ERISA and was subject to trebling under this section. *Bilow v. Preco, Inc.*, 132 Idaho 23, 966 P.2d 23 (1998).

### **When Action Accrues.**

Where the school district could have compensated the employee for his overtime work any time during the term of his contract, it was not until that contract expired that his cause of action then accrued, for it is only then that

he knew that he would not be compensated for the unpaid overtime. *Gilbert v. Moore*, 108 Idaho 165, 697 P.2d 1179 (1985).

### **Who May Sue.**

This section allows any employee who has a claim for unpaid wages to bring suit in his own behalf in any court of competent jurisdiction. *Rodwell v. Serendipity, Inc.*, 99 Idaho 894, 591 P.2d 141 (1979).

A wage earner need not proceed through the department of labor to trigger relief. *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

Any employee, who for any reason has terminated his or her employment and who has had wages withheld, may utilize this section as a remedy. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

**§ 45-618. Administrative enforcement and collection of wage claims.**

— (1) A department determination, if not appealed to an appeals examiner; or a decision of the appeals examiner, if judicial review is not sought; or a court order following judicial review, may be enforced by the department according to [section 45-620, Idaho Code](#).

(2) If at any time the department determines, in its sole discretion, that a wage claim upon which a lien was filed pursuant to [section 45-620, Idaho Code](#), is no longer collectable, the department shall:

(a) Transfer the state lien from the central lien filing system of the secretary of state to the district court in the county of the debtor's last known address. A lien transferred pursuant to this subsection shall be entered in the judgment docket of the district court and recorded as a transferred lien with the effective date of the lien being the date it was initially filed with the secretary of state.

(b) Notify the claimant in writing, at the claimant's last known address, that the lien has been transferred and advise the claimant that no further action will be maintained by the department on the wage claim, and that from the date of the transfer, it shall be the claimant's sole responsibility to maintain and enforce the lien.

(3) A lien transferred pursuant to this section shall be enforceable by the claimant in the same manner and with the same effect as if the lien had been a judgment of the district court.

**History.**

[I.C., § 45-618](#), as added by 1999, ch. 51, § 21, p. 115.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 45-619. Judicial review.** — (1) A claimant or employer aggrieved by a final decision of the appeals examiner may obtain judicial review of the decision pursuant to the provisions of chapter 52, title 67, Idaho Code, and the provisions of this section.

(2) If the employer files a petition for judicial review in a court of competent jurisdiction contesting the appeals examiner's decision, the employer, not later than the twenty-eighth day after the date the appeals examiner's decision became final, shall either:

(a) Deposit the full amount awarded to the claimant with the department, to be placed by the department in an interest-bearing escrow account of a fully insured financial institution; or

(b) Post a bond, written by a fidelity, surety, guaranty, title or trust company authorized to do business in the state of Idaho. The bond must be in the full amount of the appeals examiner's decision and shall state that the company issuing or executing the bond agrees to pay to the department on behalf of the employer all sums found to be due and owing by the employer by reason of the outcome of the appeal, within thirty (30) days of the filing of the court's decision. A copy of the bond shall be served upon the department and the claimant; or

(c) File an affidavit of inability to either post a bond or send to the department the amount awarded to the claimant.

(3) The employer's failure to timely post a bond or send the amount required by subsection (2) of this section shall constitute a waiver of the right to judicial review.

(4) If, after judicial review, it is determined that some or all of the wages are not owed or the penalty is reduced or is not assessed, the department shall remit the appropriate amount to the employer, plus the interest accrued on the escrowed amount, or collect from the bond only the amount awarded by the court on appeal, up to the maximum amount of the bond.

### **History.**

I.C., § 45-619, as added by 1999, ch. 51, § 22, p. 115.

**§ 45-620. Liens.** — (1) Upon the failure of any person to pay any amount when due pursuant to [section 45-617, Idaho Code](#), the department may file with the office of the secretary of state, as provided in chapter 19, title 45, Idaho Code, a notice of lien.

(2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with chapter 19, title 45, Idaho Code. When such notice is duly filed, all amounts due shall constitute a lien upon the entire interest, legal or equitable, in any property of such person, real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced by the director or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount secured by the lien shall bear interest at the rate of the state statutory legal limit on judgments. The foregoing remedy shall be in addition to all other remedies provided by law.

(3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

### **History.**

[I.C., § 45-620](#), as added by 1999, ch. 51, § 23, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

Interest rate on judgments, § 28-22-104.



**§ 45-621. Collection of lien amounts.** — (1) In addition to all other remedies or actions provided by this chapter, it shall be lawful for the director or his agent to collect any amounts secured by liens created pursuant to this chapter by seizure and sale of the property of any person liable for such amounts who fails to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof.

(2) Property exempt from seizure shall be the same property that is exempt from execution as otherwise allowed by law.

(3) In exercising his authority under subsection (1) of this section, the director may levy, or by his warrant, authorize any of his representatives, a sheriff or deputy to levy upon, seize and sell any nonexempt property belonging to any person liable for the amounts secured by the lien.

(4) When a warrant is issued by the department for the collection of any amount due pursuant to a lien authorized by this chapter, it shall be directed to any authorized representative of the department, or to any sheriff or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. Upon the completion of his services pursuant to said warrant, the sheriff or deputy shall receive the same fees and expenses as are provided by law for services related to a writ of execution. All such fees and expenses shall be an obligation of the person liable for the amounts due and shall be collected from such person by virtue of the warrant. Any warrant issued by the director shall contain, at a minimum, the name and address of the liable person; the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.

(5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which seizure is made, any other property subject to seizure shall be seized and sold until the amount due from such person, together with all expenses, is fully paid.

(6) All persons are required, on demand of a representative of the department, a sheriff or deputy acting pursuant to this chapter, to produce all documentary evidence and statements relating to the property or rights in the property subject to seizure.

(7) Upon the filing of a state lien pursuant to [section 45-620, Idaho Code](#), the department may collect on the lien in the same manner and to the same extent as the department collects tax liabilities and overpayment of benefits as provided by [section 63-3077A, Idaho Code](#).

**History.**

[I.C., § 45-621](#), as added by 1999, ch. 51, § 24, p. 115.



## Chapter 7

### HOSPITAL AND NURSING CARE LIENS

Sec.

45-701. Right to lien conferred.

45-702. Perfecting lien — Statement of claim — Contents — Filing.

45-703. Recording and indexing lien.

45-704. Release of lien — Action to enforce lien.

45-704A. Liens for nursing care.

45-704B. Liens for medical care.

45-705. Workmen's [Worker's] compensation cases excepted from act.

**§ 45-701. Right to lien conferred.** — Every individual, partnership, firm, association, corporation, institution or any governmental unit or combination or parts thereof maintaining and operating a hospital in this state shall be entitled to a lien for the reasonable charges for hospital care, treatment and maintenance of an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care, treatment, or maintenance was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, treatment and maintenance.

**History.**

1941, ch. 118, § 1, p. 238.

**CASE NOTES**

**Lien Not Barred by Res Judicata.**

Where the district court dismissed a hospital's claim against a patient, who lived outside the state and was injured outside the state, for lack of in personam jurisdiction, there was no final adjudication on the merits; thus, the hospital's lien foreclosure claim against the patient was not barred by the doctrine of res judicata. *Saint Alphonsus Regional Medical Ctr. v. Bannon*, 128 Idaho 41, 910 P.2d 155 (1995).

**Cited** *Williams v. Blue Cross*, 151 Idaho 515, 260 P.3d 1186 (2011).

**RESEARCH REFERENCES**

**ALR.** — Construction, operation, and effect of statute giving hospital lien against recovery from tortfeasor causing patient's injuries. 16 *A.L.R.5th* 262.

**§ 45-702. Perfecting lien — Statement of claim — Contents — Filing.**

— In order to perfect such lien, an officer or agent of such hospital, before, or within ninety (90) days after, such person shall have been discharged therefrom, shall file in the office of the recorder of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital, and the name and address of the officer or agent of such hospital filing the lien, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured person or the legal representative of such person, to be liable for damages arising from such injuries; such claimant shall also, within one (1) day after the filing of such claim or lien, mail a copy thereof, postage prepaid, to each person, firm, or corporation so claimed to be liable for such damages, at the address so given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms or corporations liable for such damages, whether or not they are named in such claim or lien.

**History.**

1941, ch. 118, § 2, p. 238; am. 1967, ch. 65, § 1, p. 147.

**CASE NOTES**

**Cited** Kenneth F. White, Chtd. v. St. Alphonsus Reg'l Med. Ctr., 136 Idaho 238, 31 P.3d 926 (Ct. App. 2001).

**§ 45-703. Recording and indexing lien.** — The recorder shall endorse thereon the date and hour of recording and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and hour of such recording, the name and address of such hospital and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damage. Such recorder shall be paid the sum as provided by [section 31-3205, Idaho Code](#).

**History.**

1941, ch. 118, § 3, p. 238; am. 1984, ch. 30, § 1, p. 51.

**§ 45-704. Release of lien — Action to enforce lien.** — No release of such causes of action, or any of them, or of any judgment thereon, shall be valid or effectual as against such lien unless such lien holder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien may enforce such lien by an action against the person, firm or corporation liable for such damage, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorney's fees and disbursements. Such action shall be commenced within two (2) years after the filing of such lien.

**History.**

1941, ch. 118, § 4, p. 238.

**CASE NOTES**

**Cited** Saint Alphonsus Regional Medical Ctr. v. Bannon, 128 Idaho 41, 910 P.2d 155 (1995); Kenneth F. White, Chtd. v. St. Alphonsus Reg'l Med. Ctr., 136 Idaho 238, 31 P.3d 926 (Ct. App. 2001).



**§ 45-704A. Liens for nursing care.** — Every person licensed under the laws of the state of Idaho to render nursing care shall be entitled to a lien for the reasonable charges for nursing care and treatment rendered an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care and treatment was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitate such nursing care and treatment; said lien shall be perfected in the form and manner as provided in [section 45-702, Idaho Code](#); said lien shall be recorded and indexed in the manner provided in [section 45-703, Idaho Code](#); said lien shall be enforced and/or released in the manner provided in [section 45-704, Idaho Code](#); and if the claimant of said lien shall prevail in an action to enforce said lien, the court may allow reasonable attorney's fees and disbursements.

**History.**

[I. C., § 45-704A](#), as added by 1961, ch. 21, § 1, p. 23.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1961, ch. 21 declared an emergency. Approved February 7, 1961.

**§ 45-704B. Liens for medical care.** — Every individual or association licensed or incorporated under the laws of the state of Idaho to practice medicine and surgery (hereinafter “physician”) shall be entitled to a lien for the reasonable charges for medical care and treatment rendered an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care and treatment was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitate such medical care and treatment. In order to perfect the lien, the physician or his agent shall, before or within ninety (90) days after the last date of medical services for the injury, file the lien in the same general form and manner as provided in [section 45-702, Idaho Code](#), in the office of the recorder of the county in which the physician rendered the services. The lien shall be recorded and indexed in the manner provided in [section 45-703, Idaho Code](#). The lien shall be enforced and/or released in the manner provided in [section 45-704, Idaho Code](#). If the claimant of the lien shall prevail in an action to enforce the lien, the court may allow reasonable attorney’s fees and disbursements.

**History.**

[I.C., § 45-704B](#), as added by 1979, ch. 302, § 1, p. 822.

**STATUTORY NOTES**

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 45-705. Workmen's [Worker's] compensation cases excepted from act.** — The provisions of this act shall not be applicable to accidents or injuries within the purview of the Workmen's [Worker's] Compensation Law of this state.

**History.**

1941, ch. 118, § 5, p. 238.

**STATUTORY NOTES**

**Cross References.**

Worker's compensation, § 72-101 et seq.

**Compiler's Notes.**

The term "this act" refers to S.L. 1941, Chapter 118, which is compiled as §§ 45-701 to 45-704, and 45-705. The term probably should read "this chapter," being chapter 7, title 45, Idaho Code.

The bracketed insertions in the section heading and text were added by the compiler to reflect the terminology currently used in title 72, Idaho Code.

**Effective Dates.**

Section 6 of S.L. 1941, ch. 118 declared an emergency. Approved March 10, 1941.

**CASE NOTES**

**Lien Waivers.**

In action involving contract dispute which arose from a remodeling project that plaintiffs performed on residential property for defendants, lien waiver signed by plaintiffs and defendants did not hold defendants harmless from claims of subcontractors where remodeling project differed from other projects performed by plaintiffs for defendant in that in this project plaintiffs did not control or direct the subcontractors as they had in the past

and defendants dealt directly with the subcontractors in that they paid several of these contractors directly and directed their work. **Baker v. Boren**, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997).

**Cited** **Williams v. Blue Cross**, 151 Idaho 515, 260 P.3d 1186 (2011).



## Chapter 8

### MISCELLANEOUS LIENS

Sec.

45-801. Vendor's lien.

45-802. Vendor's lien — Waiver.

45-803. Vendor's lien — Extent.

45-804. Lien of purchaser of real property.

45-805. Liens for services on or caring for property.

45-806. Lien for making, altering, or repairing personal property.

45-807. Lien of factor.

45-808. Lien of banker.

45-809. Lien for cooperative corporations or associations.

45-810. Homeowner's association liens.

45-811. Nonconsensual common law liens prohibited.

**§ 45-801. Vendor's lien.** — One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

**History.**

R.S., § 3440; reen. R.C. & C.L., § 3441; C.S., § 6408; I. C.A., § 44-701.

**STATUTORY NOTES**

**Cross References.**

Attorney's lien, § 3-205.

Carey Act liens, § 42-2203 et seq.

Future interest, lien on, § 45-107.

Judgment liens, §§ 5-513, 10-1110.

**CASE NOTES**

Assignment of interest.

Attorney's fees.

Conditional sale contract.

Deficiency judgment.

Equitable title.

Failure of consideration.

Nature of lien.

Protections available.

Relief to buyer.

Waiver of lien.

**Assignment of Interest.**

Purchasers under real estate sales contract never held legal title to the property but only an equitable interest as purchasers; they retained no interest in the property when they assigned their interest in the contract to the debtors, and they did not have a vendor's lien under the provisions of this section. *In re Krueger*, 127 Bankr. 252 (Bankr. D. Idaho 1991).

### **Attorney's Fees.**

Attorney's fees are not a cost chargeable in foreclosing vendor's lien. *Farnsworth v. Pepper*, 27 Idaho 154, 148 P. 48 (1915).

### **Conditional Sale Contract.**

Vendors did not, at the time of securing an attachment, have a vendor's lien on the property described in the contract; they did not part with title to property sold; hence no vendor's lien is involved. *Heinrich v. Barlow*, 87 Idaho 72, 390 P.2d 831 (1964).

### **Deficiency Judgment.**

Seller of interest in mining claims who retained title to secure payment of purchase price could foreclose vendor's lien upon default of purchaser and recover judgment for deficiency if property did not sell for enough to pay amount of debt. *Ferguson v. Blood*, 152 F. 98 (9th Cir. 1907).

Deficiency judgment may be entered in accordance with § 6-101, when the property is insufficient to satisfy claim. *Farnsworth v. Pepper*, 27 Idaho 154, 148 P. 48 (1915).

### **Equitable Title.**

Equitable title will support vendor's lien. *Farnsworth v. Pepper*, 27 Idaho 154, 148 P. 48 (1915).

### **Failure of Consideration.**

A seller who, through no fault of his own, remains unpaid because the consideration promised is not delivered has a vendor's lien on the property regardless of the nature of the promised consideration or collateral. *Blankenship v. Myers*, 97 Idaho 356, 544 P.2d 314 (1975).

A deed to a parcel of land cannot be considered payment for other property unless it is accepted by the seller as a representation of the parcel



of land and not merely a physical possession. *Blankenship v. Myers*, 97 Idaho 356, 544 P.2d 314 (1975).

### **Nature of Lien.**

Vendor's lien recognized in bankruptcy court. *In re Lane Lumber Co.*, 210 F. 82 (D. Idaho 1913), aff'd, 217 F. 550 (9th Cir. 1914).

Vendor's lien is incident of sale unless vendor's intention that it shall not exist is clearly shown. *Rogers v. Crockett*, 41 Idaho 336, 238 P. 894 (1925).

A vendor's lien is not a specific and absolute charge on the realty but a mere equitable right to resort to it, i.e., the property, on failure of payment by the vendee; thus, even if a judgment debtor did possess a vendor's lien in certain property he sold, he possessed no interest in the property which could be levied upon pursuant to § 8-539 by the judgment creditor. *Estates of Somers v. Clearwater Power Co.*, 107 Idaho 29, 684 P.2d 1006 (1984).

A vendor's lien, like a mortgage, is a security device, but unlike a mortgage, which arises from agreement of the parties, a vendor's lien arises by operation of law, unless waived. *Quintana v. Anthony*, 109 Idaho 977, 712 P.2d 678 (Ct. App. 1985).

### **Protections Available.**

The legislative policies underlying the mortgage foreclosure statutes should guide the court's exercise of its equitable powers when enforcing a vendor's lien. Therefore, protections paralleling those given mortgagors are appropriate and may be provided in equity, where sellers of real property assert the existence of vendors' liens. *Quintana v. Anthony*, 109 Idaho 977, 712 P.2d 678 (Ct. App. 1985).

### **Relief to Buyer.**

Where parties' stipulation explicitly denominated foreclosure of vendor's lien as the remedy for untimely performance of stipulated covenants, buyer was entitled to relief from any injustice shown to result from deferring a foreclosure sale of the ranch encumbered with the vendor's lien while other property was sold at execution. *Quintana v. Anthony*, 109 Idaho 977, 712 P.2d 678 (Ct. App. 1985).

### **Waiver of Lien.**

Where person sells real estate to married man and conveys same by good and sufficient deed, and takes as part of purchase price promissory notes executed by vendee and vendee's wife, the signature of wife to such notes does not constitute such security as will amount to a waiver of vendor's lien. [Smith v. Schultz](#), 23 Idaho 144, 129 P. 640 (1912).

Waiver of vendor's lien induced by fraud of vendee will not be implied. [Rogers v. Crockett](#), 41 Idaho 336, 238 P. 894 (1925).

A party with a vendor's lien does not waive the right to that lien by seeking an attachment of the property; however, an attachment would not be valid and any rights to the property would be determined by the existing security interest. [Blankenship v. Myers](#), 97 Idaho 356, 544 P.2d 314 (1975).

**Cited** [Benz v. D. L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012); [Harris v. Bank of Commerce](#), 154 Idaho 356, 298 P.3d 1060 (2013).

## RESEARCH REFERENCES

**ALR.** — Construction of provision in real estate mortgage, land contract, or other security instrument for release of separate parcels of land as payments are made. [41 A.L.R.3d 7](#).

Marketability of title as affected by lien discharged only out of funds to be received from purchaser at closing. [55 A.L.R.3d 678](#).

**§ 45-802. Vendor's lien — Waiver.** — Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract, in trust to pay debts, and return the surplus, is not a waiver of the lien.

**History.**

R.S., § 3441; reen. R.C. & C.L., § 3442; C.S., § 6409; I.C.A., § 44-702.

**§ 45-803. Vendor's lien — Extent.** — The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

**History.**

R.S., § 3442; reen. R.C. & C.L., § 3443; C.S., § 6410; I.C.A., § 44-703.

**CASE NOTES**

Good faith.

Knowledge of lien.

Purchaser or encumbrancer.

Value of lien.

**Good Faith.**

“Good faith” in this section means lack of actual or constructive knowledge of the applicable lien. *Benz v. D. L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012).

Summary judgment was error against a lienholder, who claimed that he was owed \$20,000 that he had paid toward the purchase of real property, in favor of a subsequent buyer of the property who had notice of the earlier claim, even if the subsequent buyer questioned the validity of the claim. The buyer was not a good faith purchaser. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337 (2012).

To claim a vendor's lien against a bank, foreclosing on another debt against the buyer of the property, the landowner/seller must prove that the bank was not an encumbrancer in good faith, e.g., having some notice that the purchase price for the land remained unpaid. *Harris v. Bank of Commerce*, 154 Idaho 356, 298 P.3d 1060 (2013).

Under this section, vendor's liens are subject only to encumbrancers in good faith. Good faith means lack of actual or constructive knowledge of any existing lien. Constructive knowledge is knowledge of such facts and circumstances as would have led to the discovery of a purchase and

conveyance by a reasonably prudent man. Constructive knowledge is derived from the record at the time of the encumbrance. The presence of either constructive or actual knowledge of an existing lien is sufficient to subordinate the second encumbrance to the existing lien. [Union Bank, N.A. v. N. Idaho Resorts, LLC](#), 161 Idaho 583, 388 P.3d 907 (2017).

### **Knowledge of Lien.**

Where, before the bank made a construction loan to the seller of a property, the bank had actual knowledge that the seller had contracted to sell the property and that the buyer had paid a portion of the purchase price, the bank had actual knowledge of the facts that gave rise to the buyer having a vendee's lien upon the seller acquiring the real property, and the bank could not claim priority over that lien. [Benz v. D. L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012).

### **Purchaser or Encumbrancer.**

Vendor's lien is enforceable against trustee in bankruptcy, who is not a purchaser or encumbrancer under this section. Creditor holding a lien by legal or equitable proceedings is not a purchaser or encumbrancer in good faith and for value. [In re Lane Lumber Co.](#), 210 F. 82 (D. Idaho 1913), [aff'd](#), 217 F. 550 (9th Cir. 1914).

### **Value of Lien.**

The amount that a vendee is entitled to recover back under a lien is the total amount paid on the purchase price, less any sum that the vendor is entitled to offset against that amount as damages that the vendor is entitled to recover as a result of the transaction, such as the reasonable rental value of the land while the vendee was in possession. [Benz v. D. L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012).

**Cited** [Blankenship v. Myers](#), 97 Idaho 356, 544 P.2d 314 (1975).

**§ 45-804. Lien of purchaser of real property.** — One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

**History.**

R.S., § 3444; reen. R.C. & C.L., § 3445; C.S., § 6411; I.C.A., § 44-704.

**CASE NOTES**

Agreement for sale necessary.

Applicability.

Lien priority.

Need for possession.

Subsequent sale and mortgage.

Timing of lien.

Value of lien.

**Agreement for Sale Necessary.**

This section was never intended to authorize a vendee's lien in a case where there was no "agreement for sale" of the property. *Shepherd v. Dougan*, 58 Idaho 543, 76 P.2d 442 (1938).

**Applicability.**

Summary judgment was error against a lienholder, who claimed that he was owed \$20,000 that he had paid toward the purchase of real property, in favor of a subsequent buyer of the property who had notice of the earlier claim, even if the subsequent buyer questioned the validity of the claim. The lien was legally created by this section. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337 (2012).

**Lien Priority.**

There was evidence that a buyer's vendee's lien was created before the bank's deed of trust attached to the property because it was undisputed that before the bank made the construction loan to the seller, the bank had actual knowledge that the seller had contracted to sell the property and that the buyer had paid a portion of the purchase price. The bank had actual knowledge of the facts that gave rise to the buyer having a vendee's lien, upon the seller acquiring the real property. *Benz v. D. L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012).

### **Need for Possession.**

This statutory lien exists independent of possession and it is not necessary to retain possession in order to protect lien. *Wilson v. Sunnyside Orchard Co.*, 33 Idaho 501, 196 P. 302 (1921).

Buyer's suit for rescission and refund of instalment payments on the ground of false representation as to boundaries by seller was not barred where they remained in possession, if they offered to give land back and tendered quitclaim deed, since possession was retained as security for repayment of instalment payments. *Brooks v. Jensen*, 75 Idaho 201, 270 P.2d 425 (1954).

Buyer who made a down payment was not justified in retaining possession of property for several months in order to protect her security, since this section gives a lien to purchaser for amount of down payment independent of possession. *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020 (1954), overruled on other grounds, *Benz v. D.L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012).

### **Subsequent Sale and Mortgage.**

Where purchaser properly rescinded real estate sale contract, he had a lien for return of purchase money paid in and value of improvements, and this lien was superior to sale and mortgage made after notice of pendency of a suit to declare and foreclose the lien. *McMahon v. Cooper*, 70 Idaho 139, 212 P.2d 657 (1949), overruled on other grounds, *Benz v. D.L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012).

### **Timing of Lien.**

The payment to the owner of any part of the purchase price of real property under an agreement of sale creates a lien under this section: the

filing of a lis pendens is not a prerequisite. [Benz v. D. L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012).

### **Value of Lien.**

The amount that a vendee is entitled to recover back under a lien is the total amount paid on the purchase price, less any sum that the vendor is entitled to offset against that amount as damages that the vendor is entitled to recover as a result of the transaction, such as the reasonable rental value of the land while the vendee was in possession. [Benz v. D. L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012).

## **RESEARCH REFERENCES**

**ALR.** — Right of vendee under executory land contract to lien for amount paid on purchase price as against subsequent creditors of or purchasers from vendor. [82 A.L.R.3d 1040](#).



**§ 45-805. Liens for services on or caring for property.** — (a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor, or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner, for such service. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered or materials supplied, the person in whose favor such special lien is created may proceed to sell the property at a public auction after giving ten (10) days' public notice of the sale by advertising in some newspaper published in the county where the property is situated, or if there is no newspaper published in the county then by posting notices of the sale in three (3) of the most public places in the county for ten (10) days previous to such sale. The person shall also send the notice of auction to the owner or owners of the property and to the holder or holders of a perfected security interest in the property as provided in subsection (c) of this section. The person who is about to render any service to the owner of an article of personal property by labor or skill employed for the protection, improvement, safekeeping or carriage thereof may take priority over a prior perfected security interest by, before commencing any such service, giving notice of the intention to render such service to any holder of a prior perfected security interest at least three (3) days before rendering such service. If the holder of the security interest does not notify said person, within three (3) days that it does not consent to the performance of such services, then the person rendering such service may proceed and the lien provided for herein shall attach to the property as a superior lien. The provisions of this section shall not apply to a motor vehicle subject to the provisions of [sections 49-1809 through 49-1818, Idaho Code](#).

(b) Livery or boarding or feed stable proprietors, and persons pasturing livestock of any kind, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding or pasturing such livestock. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered, or feed or pasturing supplied, the person in whose favor such special lien is created may proceed to sell the property at

a licensed public livestock auction market, or if the lien is on equines, to sell the animals at a sale offered to the public, after giving ten (10) days' notice to the owner or owners of the livestock and the state brand inspector. The information contained in such notice shall be verified and contain the following:

- (1) The time, place and date of the licensed public livestock auction market, or in the case of equines, the time, place and date of the sale offered to the public;
- (2) The name, address and phone number of the person claiming the lien;
- (3) The name, address and phone number of the owner or owners of the livestock upon which the lien has been placed;
- (4) The number, breed and current brand of the livestock upon which the lien has been placed; and
- (5) A statement by the lienor that the requirements of this section have been met.

(c) Notices provided in subsections (a) and (b) of this section shall be made by personal service or by certified or registered mail to the last known address of the owner or owners and any holder of a prior perfected security interest. The proceeds of the sale must be applied to the discharge of any prior perfected security interest, the lien created by this section and costs; the remainder, if any, must be paid over to the owner.

### **History.**

R.S., § 3445; am. 1893, p. 67, § 1; reen. 1899, p. 181, § 1; reen. R.C. & C.L., § 3446; C.S., § 6412; I.C.A., § 44-705; am. 1982, ch. 262, § 1, p. 673; am. 1990, ch. 236, § 1, p. 672; am. 2012, ch. 341, § 1, p. 953; am. 2013, ch. 86, § 1, p. 208.

## **STATUTORY NOTES**

### **Cross References.**

State brand inspector, § 25-1103.

### **Amendments.**

The 2012 amendment, by ch. 341, in subsection (b), substituted “public auction” for “licensed public livestock auction market” in the introductory paragraph and in paragraph (1).

The 2013 amendment, by ch. 86, in subsection (b), substituted “licensed public livestock auction market” for “public auction” twice, inserted “or if the lien is on equines, to sell the animals at a sale offered to the public” in the introductory language and added “or in the case of equines, the time, place and date of the sale offered to the public” in paragraph (1).

### **Compiler’s Notes.**

S.L. 2012, Chapter 341 became law without the signature of the governor, effective July 1, 2012.

### **Effective Dates.**

Section 2 of S.L. 1990, ch. 236 declared an emergency. Approved April 5, 1990.

## **CASE NOTES**

Agister’s lien.

Application.

Attorney’s fees.

Constitutionality.

Distinguished from UCC.

Foreclosure of agister’s lien.

Liberal construction.

Loss of lien.

Possession.

Premature foreclosure.

Priority of agister’s lien.

Sale of property.

State action.

Subsequent tort action.

Watchmen.

### **Agister's Lien.**

Agister's lien is strictly statutory, no such lien existing at common law. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

The only logical construction of this section is that its purpose is to protect all persons caring for and feeding livestock of others for reasonable and agreed compensation for such services. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

It makes no difference whether compensation is at certain rate per day or month or what basis is agreed upon, so long as payment is to be made under some standard of compensation. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

Act of the owner of cattle in giving agister check for amount claimed for pasturing of cattle, thereby inducing him to release his lien under this section and permit the removal of the cattle, terminated the contract between the parties, waived any breaches thereof, and reached an accord and satisfaction with the agister as to the amount due and upon stopping payment on the check was liable to the agister for the amount thereof. *Copenhaver v. Lavin*, 92 Idaho 681, 448 P.2d 774 (1968).

### **Application.**

Party placed in charge of mining property consisting of both personal and real estate has a lien on the personal property for value of his services so long as he remains in possession. *Idaho Comstock Min. & Milling Co. v. Lundstrum*, 9 Idaho 257, 74 P. 975 (1903).

Where two or three tenants in common in possession of personal property employ another to care for and protect property, latter is entitled to a lien dependent on possession for his pay for his services in caring for the same, but is not entitled to lien on real property for the care and protection of either the real estate or the personal property. *Williamson v. Moore*, 10 Idaho 749, 80 P. 227 (1905).

This section has no application to property in the custody of the law. *Beck v. Lavin*, 15 Idaho 363, 97 P. 1028 (1908).

This section applies to cases where party takes possession of personal property, such, for example, as livestock, and agrees to graze, feed or pasture stock for a period of time and assumes exclusive care of and responsibility for property, and furnishes or procures feed or pasture therefor, whether it be from his private inclosure or on the public domain. *Mendilie v. Snell*, 22 Idaho 663, 127 P. 550 (1912).

Person furnishing gasoline and nonfreezing mixture for truck is not entitled to lien for value thereof under this section or § 45-806. *Neitzel v. Lawrence*, 40 Idaho 26, 231 P. 423 (1924).

### **Attorney's Fees.**

Attorney's fees are not recoverable under this section. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

An improper inclusion of attorney's fees in a claim and in making the sale does not invalidate a proceeding or make the lien claimant guilty of conversion. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

### **Constitutionality.**

Where plaintiff has demonstrated no actual prejudice flowing from any perceived inadequacy in the notice mandated by this section, plaintiff could not argue that this section is constitutionally infirm because it denies due process; unless an individual has been adversely affected by a statute, he or she will not be heard to argue that the statute is constitutionally deficient because it lacks due process guarantees. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

### **Distinguished from UCC.**

This section applies to a wide range of service providers, ranging from sophisticated businesses to shoe repair shops and laundries, and the legislature has not seen fit to impose upon such service providers the same burdens Article 9 places on secured parties under the UCC; neither has the legislature determined that service providers must, in effect, sell or buy property at full market value in order to collect the debts owed to them. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

### **Foreclosure of Agister's Lien.**

In action to foreclose agister's lien there is no misjoinder of parties in including original owner and his vendee with one holding chattel mortgage on property. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

Agreement with agisters to continue feeding cattle and adding others to original number has effect of continuing lien, and action may be brought within six months from time cattle are taken. *Smeed v. Stockmen's Loan Co.*, 48 Idaho 643, 284 P. 559 (1930).

### **Liberal Construction.**

This section will be liberally construed in favor of the workmen. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

### **Loss of Lien.**

Lien is not lost where property is taken from possession of lienholder by force or fraud. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

As a general rule, common law or statutory lien dependent upon possession is waived or lost by lienholder voluntarily and unconditionally parting with possession or control of property to which it attaches; but not where there is intention to preserve lien and lienholder parts with possession only conditionally. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

Waiver of lien cannot be predicated on contract whereby parties agreed to sale of cattle and temporary disposition of money pending determination of their claims. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

Where property is delivered to person under single contract and part is voluntarily returned without payment, lienor will retain his lien on part remaining in his possession for whole amount due under contract. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

Although the farmer argued that the family did not properly foreclose their lien because they did not follow the statutory procedure prescribed by subsection (b) for selling the cattle, the family did not sell the cattle, however, the county did; although a lien dependent on possession was lost if the holder of the lien voluntarily relinquished possession of the property or restored it to the owner, the family did not do so as it was the county, in

the exercise of its police power, that took the cattle from the family's dairy. *Twin Falls County v. Coates*, 139 Idaho 442, 80 P.3d 1043 (2003).

### **Possession.**

Right to lien under this section depends wholly upon possession of property by claimant. *Hill v. Twin Falls Salmon River Land & Water Co.*, 22 Idaho 274, 125 P. 204 (1912).

Possession necessary to entitle party to a lien must be such as to give party for time being the exclusive care, control and direction of property, which must be more than that of a mere servant for hire from day to day or month to month who is subject to direction and orders of the master. *Mendilie v. Snell*, 22 Idaho 663, 127 P. 550 (1912).

If, in connection with closing a sale, papers are put into broker's hands incidentally, and only to have him examine mortgage and abstract, he is not entitled to a lien upon them for any commission which might be due from plaintiff to him in negotiating sale of said property. *Smith v. Bergstresser*, 26 Idaho 322, 143 P. 402 (1914).

### **Premature Foreclosure.**

A lien is not prematurely foreclosed because sixty days had not elapsed between the time the work was done, or services rendered, and the foreclosure, nor because a watchman remained in charge of the property after making demand for payment. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

### **Priority of Agister's Lien.**

Agister's lien entered into prior to execution of chattel mortgage on property involved is prior to and superior to lien of such chattel mortgage. *Gould v. Hill*, 43 Idaho 93, 251 P. 167 (1926).

### **Sale of Property.**

This section contains no requirement that a lienholder make a payment based on the property's full market value; it allows a lienholder to conduct a sale at which it may bid the amount claimed for services rendered, plus sale costs; if the property is sold for a sum greater than the debt (including costs) secured by the lien, the lienholder must tender the excess proceeds to the

property owner. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

### **State Action.**

The lien sale procedure authorized by this section is a self-help remedy, and such a remedy will not constitute state action. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

### **Subsequent Tort Action.**

It would be palpably unfair, and would undermine the remedial purpose of lien statutes, if a debtor could stand silent, allowing a sale to occur without objection, and then obtain tort damages in a subsequent lawsuit if the debt were ultimately found to have an offset; the law does not, and should not, countenance such a retroactive tort. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

Where a boatowner, having been notified of a debt regarding moorage services and of an impending sale of his boat to satisfy the debt, could have asserted its offset before the sale occurred, but instead, elected to remain silent, in this circumstance the sale of the boat cannot be deemed a conversion. *Comstock Inv. Corp. v. Kaniksu Resort*, 117 Idaho 990, 793 P.2d 222 (Ct. App. 1990).

### **Watchmen.**

A watchman of property has sufficient possession to entitle him to assert the lien provided for by this section. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

A watchman in charge of property who is entitled to a lien may claim the benefits thereof where he is discharged and remains on the property up to the time of the sale. *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 53 P.2d 1166 (1936).

**Cited** *Folen v. Saxton*, 31 Idaho 319, 171 P. 669 (1918); *State v. O'Bryan*, 96 Idaho 548, 531 P.2d 1193 (1975); *Pine Creek Ranches, Inc. v. Higley*, 101 Idaho 326, 612 P.2d 1173 (1980); *Curry Grain Storage, Inc. v. Hesston Corp.*, 120 Idaho 328, 815 P.2d 1068 (1991).

## **RESEARCH REFERENCES**



**ALR.** — Lien for towing or storage, ordered by public officer, of motor vehicle. 85 A.L.R.3d 199.

**§ 45-806. Lien for making, altering, or repairing personal property.**

— Any person, firm or corporation, who makes, alters or repairs any article of personal property, at the request of the owner or person in legal possession thereof, has a lien, which said lien shall be superior and prior to any security interest in the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction, by giving ten (10) days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof. Provided that the said person, firm or corporation who is about to make, alter or repair the said property, in order to derive the benefits of this section, must, before commencing said making, altering or repairing, give notice of the intention to so make, alter or repair said property, by registered mail, to any holder of a security interest which is of record in the county where said property is located, or in the office of the secretary of state, and, if a motor vehicle, to any holder of a security interest which may appear on the certificate of title of said vehicle, at least three (3) days before commencing said making, altering or repairing and if notice in writing within said three (3) days be not given by such holder of a security interest notifying said firm or corporation not to perform said services then the said making, altering or repairing may proceed and the prior lien provided for herein attaches to said property.

**History.**

R.S., § 3446; reen. R.C. & C.L., § 3447; C.S., § 6413; I.C.A., § 44-706; am. 1935, ch. 87, § 1, p. 152; am. 1967, ch. 272, § 12, p. 745; am. 1995, ch. 157, § 1, p. 635.

**STATUTORY NOTES**

## **Cross References.**

Secretary of state, § 67-901 et seq.

Secured transactions, § 28-9-101 et seq.

## **Effective Dates.**

Section 32 of S.L. 1967, ch. 272 provided that the act should take effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

## **CASE NOTES**

Bankruptcy.

Bona fide purchaser.

Foreclosure sale.

Furnishing fuel.

Lien.

Lien at other than owner's request.

Lien at owner's request.

### **Bankruptcy.**

Where defendant retained possession of debtor's car after debtor failed to pay for work performed, defendant's refusal to return car after debtor filed for bankruptcy did not violate bankruptcy law, because the creditor's statutory lien was dependent on possession. *Boggan v. Hoff Ford, Inc (In re Boggan)*, 1999 Bankr. LEXIS 2131 (Bankr. D. Idaho Nov. 30, 1999), aff'd, 251 B.R. 95 (B.A.P. 9th Cir. 2000).

### **Bona Fide Purchaser.**

Purchaser of tractor at lien foreclosure sale for amount of minimum required bid was bona fide purchaser, even though owner's representative at sale attempted to reach agreement with lien holders at sale and failed; fact that purchaser knew of owner's claims on tractor did not prevent purchaser from becoming a bona fide purchaser in good faith, as this knowledge was not the type which would interfere with purchaser's good faith act of

purchase. *Jahnke v. Mesa Equip., Inc.*, 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996).

### **Foreclosure Sale.**

Where lien holder's right to collect the full amount of the debt due on repaired tractor by way of a lien foreclosure sale might have been subject to a timely challenge, tractor owner's failure to present challenge until after completed sale and transfer of property to bona fide purchaser precluded such a claim. *Jahnke v. Mesa Equip., Inc.*, 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996).

Foreclosure sale of tractor, held by lien holder, which was conducted in one of the two counties where repair work was performed on tractor was proper, where notice of sale was advertised in a newspaper published in one of the counties where repair work was done, the owner had actual notice of the sale, appeared through his representative and attempted to purchase property, and where owner failed to show any prejudice to him based on location of sale. *Jahnke v. Mesa Equip., Inc.*, 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996).

### **Furnishing Fuel.**

Person furnishing gasoline and nonfreezing mixture for truck is not entitled to lien under this section or § 45-805. *Neitzel v. Lawrence*, 40 Idaho 26, 231 P. 423 (1924).

### **Lien.**

Mechanic's lien was not dependent upon the lien claimant's continued possession of tractor, where repair shop sent tractor to another dealer for required work on engine block; for purposes of transaction, dealer who did work on engine block was subcontractor of repair shop and its possession of tractor was properly imputed to repair shop. *Jahnke v. Mesa Equip., Inc.*, 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996).

### **Lien at Other Than Owner's Request.**

The notice of intention to repair required by this section to be given to the holder of a security interest in the article to be repaired need not be given to the owner of the article when it is presented for repair by someone

other than the owner in lawful possession. *American Mach. Co. v. Fitzpatrick*, 92 Idaho 416, 443 P.2d 1013 (1968).

### **Lien at Owner's Request.**

In order to give lien, repairs and alterations on personal property must be made at request of owner. *Neitzel v. Lawrence*, 40 Idaho 26, 231 P. 423 (1924).

## **RESEARCH REFERENCES**

**ALR.** — Contractor's equitable lien upon percentage of funds withheld by contractee or lender. 54 A.L.R.3d 848.

Lien for storage of motor vehicles. 85 A.L.R.3d 199.

Lien for towing or storage, ordered by public officer, of motor vehicle. 85 A.L.R.3d 199.

Loss of garageman's lien on repaired vehicle by owner's use of vehicle. 74 A.L.R.4th 90.

**§ 45-807. Lien of factor.** — A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

**History.**

R.S., § 3447; reen. R.C. & C.L., § 3448; C.S., § 6414; I.C.A., § 44-707.

**§ 45-808. Lien of banker.** — A banker has a general lien, dependent on possession, upon all property in his hands, belonging to a customer, for the balance due to him from such customer in the course of the business.

**History.**

R.S., § 3448; reen. R.C. & C.L., § 3449; C.S., § 6415; I.C.A., § 44-708.

**CASE NOTES**

Application.

Deposits, application of.

Lien denied.

Setoff.

**Application.**

This section is limited in its application to property taken by banker in the usual course of banking business and does not operate to afford lien on stock of merchandise transferred to a bank in such manner as to constitute preference under bankruptcy law. *In re Gesas*, 146 F. 734 (9th Cir. 1906).

**Deposits, Application of.**

As against depositor, bank may at any time before actual payment to him apply deposit to payment of his matured debts or obligations held by bank. *Holloway v. First Nat'l Bank*, 45 Idaho 746, 265 P. 699 (1928).

Under this section, a bank may apply the deposit of an indorser without resorting to mortgage security securing the note. *Jeppesen v. Rexburg State Bank*, 57 Idaho 94, 62 P.2d 1369 (1936).

A credit union's exercise of its "self-help" right of set-off contained in the pledge agreement with the plaintiff and her husband did not require any court action to accomplish, and accordingly the statute of limitations was not implicated when the credit union set off funds deposited with it against defaulted loans of the husband. *Smith v. Idaho State Univ. Fed. Credit Union*, 114 Idaho 680, 760 P.2d 19 (1988).

### **Lien Denied.**

Bank lost possession of funds when it turned them over to the trustee, and, having done so, it was obligated to take prompt action, including filing a motion for relief from the automatic stay and requesting adequate protection, to preserve its possessory lien rights, but it failed to do so. Because it lacked possession of the funds, and it had unnecessarily delayed asserting its rights, the bank could not seek a banker's lien upon the funds the trustee held. *In re Lifestyle Furnishings, LLC*, 418 B.R. 382 (Bankr. D. Idaho 2009).

### **Setoff.**

When a bank applies customer's funds to a debt owed by him to bank, it is acting pursuant to its right of setoff rather than exercising a banker's lien. *Meyer v. Idaho First Nat'l Bank*, 96 Idaho 208, 525 P.2d 990 (1974).

**Cited** *First Interstate Bank v. Gill*, 108 Idaho 576, 701 P.2d 196 (1985).



**§ 45-809. Lien for cooperative corporations or associations.** — Any cooperative corporation, as defined by Idaho Code, which provides goods or services to any person, firm or corporation, may set off any equity interest owned by such person, firm or corporation in the cooperative as a means of collecting obligations owed to it for such goods or services. Equity shall include, but not be limited to, membership stock, capital credits, accounts representing capital credits, capital stock or patronage credits. The cooperative shall have a lien on and a continuing perfected security interest in such equity to secure payment of any indebtedness, whenever incurred, owed to the cooperative by the person, firm or corporation receiving goods or services. Such lien and continuing perfected security interest may be enforced by right of offset when it becomes due and payable under the articles or bylaws of the cooperative. The cooperative's right of offset shall not entitle the debtor to set off its obligations against equity interest it owns in the cooperative which are not yet an obligation of the cooperative payable under the article or bylaws of the cooperative.

**History.**

I.C., § 45-809, as added by 1996, ch. 344, § 1, p. 1154.

**STATUTORY NOTES**

**Cross References.**

Cooperative corporation defined, § 30-30-103.

**§ 45-810. Homeowner's association liens.** — (1) Whenever a homeowner's association levies an assessment against a lot for the reasonable costs incurred in the maintenance of common areas consisting of real property owned and maintained by the association, the association, upon complying with subsection (2) of this section, shall have a lien upon the individual lot for such unpaid assessments accrued in the previous twelve (12) months.

(2)(a) An association claiming a lien under subsection (1) of this section shall file in the county in which the lot or some part thereof is located a claim containing:

- (i) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- (ii) The name of the owner, or reputed owner, if known;
- (iii) The name of the association; and
- (iv) A description, sufficient for identification, of the property to be charged with the lien.

(b) When a claim has been filed and recorded pursuant to this section and the owner of the lot subject to the claim thereafter fails to pay any assessment chargeable to such lot, then so long as the original or any subsequent unpaid assessment remains unpaid, such claim shall automatically accumulate the subsequent unpaid assessments without the necessity of further filings under this section.

(c) The claim shall be verified by the oath of an individual having knowledge of the facts and shall be recorded by the county recorder. The record shall be indexed as other liens are required by law to be indexed.

(d) Within five (5) business days after recording a lien on the property, the association shall serve, by personal delivery to the owner or reputed owner or by certified mail to the last known address of the owner or reputed owner, a true and correct copy of the recorded lien.

(3) The lien may be continued in force for a period of time not to exceed one (1) year from the date the claim is filed and recorded under subsection

(2) of this section; provided however, that such period may be extended by the homeowner's association for not to exceed one (1) additional year by recording a written extension thereof. For the purpose of determining the date the claim is filed in those cases when subsequent unpaid assessments have accumulated under the claim as provided in subsection (2) of this section, the claim regarding each unpaid assessment shall be deemed to have been filed at the time such unpaid assessment became due. The lien may be enforced by the board of directors acting on behalf of the association.

(4) This section does not prohibit a homeowner's association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(5) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.

(6) As used in this section, "homeowner's association" means any incorporated or unincorporated association:

(a) In which membership is based upon owning or possessing an interest in real property; and

(b) That has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members.

(7) In order to file a lien as provided in this section, a homeowner's association that is an unincorporated association must be governed by bylaws which provide for at least the following:

(a) A requirement that the homeowner's association hold at least one (1) meeting each calendar year;

(b) A requirement that notice of any meeting of the homeowner's association be published and distributed to all members of the homeowner's association;

- (c) A requirement that the minutes of all homeowner's association meetings be recorded;
- (d) A method of adopting and amending fees; and
- (e) A provision providing that no fees or assessments of the homeowner's association may be increased unless a majority of all members of the homeowner's association vote in favor of such increase.

**History.**

I.C., § 45-810, as added by 2002, ch. 275, § 1, p. 807; am. 2010, ch. 41, § 1, p. 72.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 41, substituted “five (5) business days” for “twenty-four (24) hours” in subsection (2)(d).

**CASE NOTES**

**Cited** *Pend Oreille View Estates, Owners' Ass'n v. T.T. LLC*, 161 Idaho 188, 384 P.3d 952 (2016).

**§ 45-811. Nonconsensual common law liens prohibited.** — (1) For purposes of this section, “nonconsensual common law lien” means a lien that:

(a) Is not provided for by a specific state or federal statute; (b) Does not depend upon the consent of the owner of the property affected for its existence; (c) Is not a court-imposed equitable, judgment or constructive lien; and (d) Is not of a kind commonly used in legitimate commercial transactions.

(2) Nonconsensual common law liens are hereby prohibited. The state of Idaho shall not recognize or enforce nonconsensual common law liens. Provided however, that if a county clerk or other recording officer accepts for filing or recording a claim of a nonconsensual common law lien, the clerk or officer shall not be penalized or be liable for such filing or recording.

(3) Petition to release and complaint for penalties.

(a) A person whose real or personal property is subject to a recorded claim of a nonconsensual common law lien may at any time petition the district court of the county in which the claim has been recorded for an order releasing the claim. The petition, which may be heard ex parte, shall be heard as soon as practicable by the court. If it appears from the content of the lien that the lien is a nonconsensual common law lien, the court shall issue an order to the lienor to appear at a date not sooner than fifteen (15) days after the order is made, nor later than thirty (30) days, at which time the lienor must show cause why the claim of lien should not be released. If the lienor does not appear or if the showing of cause is insufficient, the court shall issue an order releasing the claim of lien. If good cause is shown by the lienor that the lien is not a nonconsensual common law lien and has a valid basis, the matter shall be set for further proceedings to determine the validity of the lien.

(b) A complaint for penalties and other relief awarded pursuant to subsection (4) of this section may be filed separately or in conjunction with a petition filed under paragraph (a) of this subsection, but such

complaint may not be filed any later than ninety (90) days after the hearing on the court's order to show cause as provided in paragraph (a) of this subsection.

(c) The filing fee for a petition filed pursuant to paragraph (a) of this subsection shall be thirty-five dollars (\$35.00). The filing fee for a complaint filed pursuant to paragraph (b) of this subsection shall be prescribed by court rule.

**(4) Penalties.**

(a) Any person who files or records in the office of a county clerk or recorder, or with the secretary of state, any document attempting to create a nonconsensual common law lien against real or personal property, and who has refused or failed to withdraw such document upon written request by the owner of the property, shall be liable to the owner for the sum of not less than five thousand dollars (\$5,000) or for actual damage caused thereby, whichever is greater, together with any court costs and reasonable attorney's fees.

(b) Any lienor or other person claiming interest in property under a recorded nonconsensual common law lien against real or personal property who has refused or failed to record a release or disclaimer of interest in such property upon written request by the owner of the property shall be liable to the owner for the damages, court costs and attorney's fees provided in paragraph (a) of this subsection.

**History.**

I.C., § 45-811, as added by 2016, ch. 170, § 2, p. 471.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.



## Chapter 9

### MORTGAGES IN GENERAL

Sec.

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**§ 45-901. Mortgage defined.** — Mortgage is a contract excepting a trust deed or transfer in trust by which specific property is hypothecated for the performance of an act without the necessity of a change of possession.

**History.**

R.S., § 3350; reen. R.C. & C.L., § 3388; C.S., § 6355; I.C.A., § 44-801; am. 1957, ch. 181, § 16, p. 345.

**STATUTORY NOTES**

**Cross References.**

Foreclosure of mortgages, § 6-101 et seq.

Mortgage not a conveyance, § 6-104.

Mortgage to secure performance of future obligations, § 45-108.

Trust deeds, § 45-1501 et seq.

**CASE NOTES**

Deed absolute as mortgage.

Enforceability.

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Form of mortgage.

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Lien of mortgage survives how long.

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Payment of taxes and water assessments.

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Sufficiency of evidence.

### **Deed Absolute as Mortgage.**

Deed absolute on its face is a mortgage if it is a transfer, other than a trust, made only as security for the performance of another act. *Hannah v. Vensel*, 19 Idaho 796, 116 P. 115 (1911); *Capital Lumber Co. v. Saunders*, 26 Idaho 408, 143 P. 1178 (1914).

### **Enforceability.**

As between the parties, the chattel mortgages are enforceable and will be given full weight, even though ineffective as to third persons because of lack of notice. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

### **Form of Indebtedness.**

Debt for which mortgage is given may consist in the faithful performance of a duty resting upon mortgagor, if it is capable of being reduced to money value. *Dover Lumber Co. v. Case*, 31 Idaho 276, 170 P. 108 (1918), overruled on other grounds, *David Steed & Assocs. v. Young*, 115 Idaho 247, 766 P.2d 717 (1988).

### **Form of Mortgage.**

Whatever the form of agreement may be, if it in fact amounts to a mortgage it will be so considered. *Payette-Boise Water Users' Ass'n v. Fairchild*, 35 Idaho 97, 205 P. 258 (1922).

Subscription contract for shares in water users' association, whereby it is agreed that payments on authorized assessments shall be secured by lien on shares and lands of subscriber, to be enforced by foreclosure and sale as in case of mortgages, constitutes mortgage within definition of this section. *Payette-Boise Water Users' Ass'n v. Fairchild*, 35 Idaho 97, 205 P. 258 (1922).

Where there is no change of possession nor conveyance of property but a simple hypothecation of described property, for payment of debt, transaction is mortgage within meaning of this section. *Payette-Boise Water Users' Ass'n v. Fairchild*, 35 Idaho 97, 205 P. 258 (1922).

The conclusion reached by the trial court that securities credit corporation was a general creditor was correct, acknowledgments to the chattel mortgages being void and the instruments not meeting the requirements by being properly acknowledged and lawfully filed under the chattel mortgage section. A judgment having been entered for the disposition for the property prevents the defendant from now availing himself of the statute by correcting the errors in mortgages. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

### **Indebtedness as Test.**

The test to determine whether an instrument is a mortgage or absolute conveyance is whether, at the time of the execution thereof, there was a debt owing from the giver of such instrument to the grantee or vendee therein, and whether such debt existed after the execution of the instrument. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933).

### **Issues for Jury.**

Where the question was whether a bill of sale of property and a conditional sale contract with respect to the same property were a chattel mortgage or an absolute conveyance from one to another, the evidence was sufficient to require the submission of the issues to a jury. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Jury Question.**

The question of whether a bill of sale of property and a conditional sale contract with respect thereto are to be construed as an absolute conveyance from one party to the other, and a contract to reconvey from the latter to the former, or whether they constitute a mortgage, is, in an action at law where the evidence is conflicting, for the jury. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Law as Part of Mortgage.**

It is well settled that the law existing when a mortgage is made enters into and becomes a part of the contract and a note and mortgage will be construed as one contract. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

### **Lien of Mortgage Survives How Long.**

The life of a mortgage does not cease to exist so long as the notes secured by it are actionable, for the reason that the mortgage is an incident to the debt. So long as the note secured by a mortgage is kept alive, then it is actionable, and a note is kept alive, consequently either by the obligee signing an agreement promising payment, or making payment on principal or interest, and the mortgage lien will continue and remain unimpaired for five years thereafter. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

### **Meaning of Mortgage.**

A “mortgage” is a contract by which specific property is hypothecated for performance of an act without necessity of change of possession. *Eastern Idaho Loan & Trust Co. v. Blomberg*, 62 Idaho 497, 113 P.2d 406 (1941).

### **Payment of Taxes and Water Assessments.**

Under provision in a mortgage that, if the mortgagor failed to pay taxes and water assessments, mortgagee could pay the same and such payments would become a part of the mortgage debt, such provision is upheld, and mortgagee is entitled to have payments made by him for taxes and water assessments become a part of the mortgage debt and secured accordingly. *Union Cent. Life Ins. Co. v. Nielson*, 62 Idaho 483, 114 P.2d 252 (1941).

### **Security Instrument.**

A security instrument, however it is called, is a mortgage whenever real property is encumbered as security for a debt or liability. *Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (1983).

### **Sufficiency of Evidence.**

The facts were sufficient to warrant a holding that a deed and contract given the same time should be construed together as one transaction, and not as separate and distinct transactions, and that they constituted a mortgage. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933).

**Cited** *State v. Snyder*, 71 Idaho 454, 233 P.2d 802 (1951); *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958); *Quintana v. Anthony*, 109 Idaho 977, 712 P.2d 678 (Ct. App. 1985); *Old Stone Capital Corp. v. John Hoene Implement Corp.*, 647 F. Supp. 916 (D. Idaho 1986); *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of clause entitling mortgagee to acceleration of balance due in case of conveyance of mortgaged property. 69 A.L.R.3d 713; 22 A.L.R.4th 1266; 61 A.L.R.4th 1070.

Excessiveness or adequacy of attorneys' fees in matters involving real estate — Modern cases. 10 A.L.R.5th 448.

**§ 45-902. Mortgage must be in writing.** — A mortgage, deed of trust or transfer in trust can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant or conveyance of real property.

**History.**

R.S., § 3351; reen. R.C. & C.L., § 3389; C.S., § 6356; I.C.A., § 44-802; am. 1957, ch. 181, § 17, p. 345.

**STATUTORY NOTES**

**Cross References.**

Conveyance of real property, § 55-601 et seq.

**CASE NOTES**

Application.

Estoppel.

Formalities of document.

Oral agreement insufficient.

Prohibited agreements.

Subordination agreement.

**Application.**

This section applies to all mortgages whether real or chattel. *Willows v. Rosenstien*, 5 Idaho 305, 48 P. 1067 (1897); *Keane v. Kibble*, 28 Idaho 274, 154 P. 972 (1915).

Contemporaneous agreement that mortgage shall operate as continuing security for floating balance of indebtedness not exceeding amount of mortgage is not extension of mortgage within meaning of this section. *Weiser Loan & Trust Co. v. Comerford*, 41 Idaho 172, 238 P. 515 (1925).

**Estoppel.**

Where stranger to mortgage purchases mortgaged property and agrees that mortgage shall stand as security for purchase price, provisions of this section have no application, and purchaser is estopped to deny validity of the agreement although it is not executed in conformity to this section. *Burke Land & Live-Stock Co. v. Wells Fargo & Co.*, 7 Idaho 42, 60 P. 87 (1900).

### **Formalities of Document.**

Mortgage which a business gave to a husband and wife to secure debts the business allegedly owed the husband and wife was not valid under § 55-601 and this section, because the husband and wife did not include their complete mailing address on the instrument, or incorporate their address by reference to some other document. *Hopkins v. Thomason Farms, Inc. (In re Thomason)*, Case No. 03-42400, 2009 Bankr. LEXIS 1769 (Bankr. D. Idaho June 24, 2009).

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. *In re McMurdie*, 448 B.R. 826 (Bankr. D. Idaho 2010).

### **Oral Agreement Insufficient.**

In a mortgagor's action against a mortgagee to recover damages for alleged breach of an agreement "to dispose of foreclosure proceedings" of a second mortgage, allegation of an oral agreement to reinstate foreclosed second mortgage as first mortgage on property was purely "conclusion" in view of the statute expressly providing that a mortgage can be created, renewed or extended only by writing, executed with formalities required in the case of a grant or conveyance of real estate. *Toston v. Utah Mtg. Loan Corp.*, 115 F.2d 560 (9th Cir. 1940).

### **Prohibited Agreements.**

Agreement to hold a mortgage for individual indebtedness when said mortgage has been included in a subsequent copartnership mortgage which has been satisfied is contrary to provisions of this section. *Willows v. Rosenstien*, 5 Idaho 305, 48 P. 1067 (1897).

Lien of mortgage cannot be extended beyond its terms so as to secure a debt not named therein, or to hypothecate property not covered by mortgage, except by a compliance with the provisions of this section; but

this does not preclude mortgagor from waiving statute of limitations as to mortgage debt by indorsing an acknowledgment to pay debt on note and mortgage. *Moulton v. Williams*, 6 Idaho 424, 55 P. 1019 (1899).

Parties to usurious contract secured by trust deed cannot remove usurious character of transaction by an agreement between themselves, and thus make trust deed a lien for interest and costs as against junior mortgagee, who is not a party to the agreement, and whose rights will be prejudiced thereby. *Madsen v. Whitman*, 8 Idaho 762, 71 P. 152 (1902).

### **Subordination Agreement.**

The subordination agreement could not be elevated to the position of a mortgage or deed of trust where it lacked the formalities of such required under this section. *Old Stone Capital Corp. v. John Hoene Implement Corp.*, 647 F. Supp. 916 (D. Idaho 1986).

**Cited** *Rowe v. Stevens*, 25 Idaho 237, 137 P. 159 (1913); *Payette-Boise Water Users' Ass'n v. Fairchild*, 35 Idaho 97, 205 P. 258 (1922); *McKay v. Walker*, 160 Idaho 148, 369 P.3d 926 (2016).

## **RESEARCH REFERENCES**

**ALR.** — Which of conflicting descriptions in deeds or mortgages of fractional quantity of interest intended to be conveyed prevails. 12 *A.L.R.4th* 795.



**§ 45-903. Lien of mortgage is special.** — The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

**History.**

R.S., § 3352; reen. R. C. & C.L., § 3390; C.S., § 6357; I.C.A., § 44-803.

**CASE NOTES**

Payments to prevent foreclosure.

Rights of junior mortgagee.

**Payments to Prevent Foreclosure.**

Since the second deed of trust held by the seller of house was functionally equivalent to a mortgage, the holders' lien was special; accordingly, § 45-105 entitled them to include payments they made to prevent foreclosure of the first deed of trust as part of the mortgage indebtedness created by their junior encumbrance. *Thompson v. Kirsch*, 106 Idaho 177, 677 P.2d 490 (Ct. App. 1984).

**Rights of Junior Mortgagee.**

Junior mortgagee may raise question of usury in respect to first mortgage contract in the same manner as owner of property. *United States Bldg. & Loan Ass'n v. Lanzarotti*, 47 Idaho 287, 274 P. 630 (1929).

**Cited** *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

**§ 45-904. Transfers deemed mortgages.** — Every transfer of an interest in property other than in trust to secure the performance of any obligation of the trustor or other person named in the trust instrument, made only as a security for the performance of another act, is to be deemed a mortgage.

**History.**

R.S., § 3353; reen. R.C. & C.L., § 3391; C.S., § 6358; I. C.A., § 44-804; am. 1957, ch. 181, § 18, p. 345; am. 1967, ch. 272, § 13, p. 745.

**STATUTORY NOTES**

**Effective Dates.**

Section 32 of S.L. 1967, ch. 272 provided that the act should take effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

**CASE NOTES**

Cancellation of defeasance.

Complaint, sufficiency.

Construction.

Deed absolute on face.

Determination of question.

Equitable mortgage.

Estoppel.

Foreclosure of mortgage.

Indebtedness as test.

Jury question.

Mortgage, evidence showing.

Pledge of lease.

Sale of mortgaged property.

Security.

Sufficiency of evidence.

Trust defined.

What constitutes mortgage.

### **Cancellation of Defeasance.**

Defeasance may be voluntarily surrendered or canceled, and such action will render mortgage, whether it was in form a mortgage, or whether it was in form a conveyance absolute with defeasance provable by parol, an absolute deed and conveyance. *Smith v. Schultz*, 23 Idaho 144, 129 P. 640 (1912).

Equity of redemption may be purchased from mortgagor, and debt thereby be extinguished, and transfer become absolute. *Shaner v. Rathdrum State Bank*, 29 Idaho 576, 161 P. 90 (1916).

### **Complaint, Sufficiency.**

The complaint in the cited case held sufficient as against a general demurrer, whereby it was sought to have the transaction declared a mortgage. *Fond v. McCreery*, 55 Idaho 144, 39 P.2d 766 (1934).

### **Construction.**

Provision of this section is rule of property and is recognized both at law and in equity. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

### **Deed Absolute on Face.**

Deed absolute on its face cannot be held to be mortgage unless there is debt to be secured thereby, since mortgage is defeasible conveyance made simply to secure debt. *Shaner v. Rathdrum State Bank*, 29 Idaho 576, 161 P. 90 (1916); *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

On issue as to whether deed absolute in form was intended as mortgage, test is whether there was subsisting debt after conveyance. *Clinton v. Utah Constr. Co.*, 40 Idaho 659, 237 P. 427 (1925); *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

Fee simple title is presumed to pass by grant of real property, and, independent of proof, presumption arises that instrument is what it purports on its face to be — an absolute conveyance. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

Rule is well recognized and established that deed absolute in form may be shown to have been intended as mortgage. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928); *Investors Mtg. Secur. Co. v. Hamilton*, 51 Idaho 113, 4 P.2d 347 (1931).

Where the grantee in deeds had advanced money to the grantor and, in some transactions, received promissory notes for the amounts advanced, such deeds were properly found to be mortgages. *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

### **Determination of Question.**

To justify trial court in determining that deed which purports to convey land absolutely in fee simple is mortgage, evidence must be clear, satisfactory and convincing. It must appear to court beyond reasonable controversy that it was the intention of parties that the deed should be a mortgage. *Clinton v. Utah Constr. Co.*, 40 Idaho 659, 237 P. 427 (1925); *Drennan v. Lavender*, 41 Idaho 263, 238 P. 532 (1925); *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

Where evidence on question whether bill of sale with agreement to repurchase constitutes mortgage or pledge, determination is for jury. *Schleiff v. McDonald*, 41 Idaho 50, 237 P. 1108 (1925).

Decision of trial court upon conflicting or contradictory evidence is not open to review in appellate court. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

Parol evidence is admissible to show whether warranty deed with option to purchase back was conveyance or mortgage. *Investors Mtg. Secur. Co. v. Hamilton*, 51 Idaho 113, 4 P.2d 347 (1931).

Controlling question is whether or not debt is paid on execution and delivery of deed. *Investors Mtg. Secur. Co. v. Hamilton*, 51 Idaho 113, 4 P.2d 347 (1931).

A warranty deed along with an agreement to reconvey the property in the future was an outright conveyance rather than a mortgage, where the transaction did not secure any debt, defendants' predecessors could reacquire the property by paying certain sums to plaintiffs' predecessors, but they were not obligated to make those payments, and amount paid by plaintiffs' predecessors was the fair market value of the real property at the time of the transaction. *Hogg v. Wolske*, 142 Idaho 549, 130 P.3d 1087 (2006).

### **Equitable Mortgage.**

Where deed, absolute on its face, is taken to real property but is, in effect, an equitable mortgage, and plaintiff prays to have the same so declared, and no application is made to foreclose said mortgage, proper form of decree is that plaintiff be allowed to redeem upon the payment of the sum found due within a reasonable time to be fixed by the decree, and that upon such payment the mortgage shall be adjudged to be satisfied, and that in default of such payment the title shall be quieted in defendant. *Machold v. Farnan*, 20 Idaho 80, 117 P. 408 (1911).

### **Estoppel.**

Where plaintiff sued for conversion of his automobile, where the transaction grew out of a bill of sale from the plaintiff to the defendant and a conditional sales contract, executed by the plaintiff to the defendant, as on purchase, and where plaintiff did not tender the amount of his indebtedness or offer to have it deducted from the amount claimed, he was not estopped from urging that the transaction constituted a chattel mortgage securing an indebtedness. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Foreclosure of Mortgage.**

Where the transaction amounted to a mortgage, it must be foreclosed to satisfy the debt secured thereby. *Jaussaud v. Samuels*, 58 Idaho 191, 71 P.2d 426 (1937).

### **Indebtedness as Test.**

The test to determine whether an instrument is a mortgage or absolute conveyance is whether, at the time of the execution thereof, there was a debt owing from the giver of such instrument to the grantee or vendee therein,

and whether such debt existed after the execution of the instrument. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933).

Before an instrument, purporting to be an absolute conveyance on its face, can be construed as a mortgage or security, it is indispensable that there be an existing indebtedness. *Fond v. McCreery*, 55 Idaho 144, 39 P.2d 766 (1934).

### **Jury Question.**

The question of whether a bill of sale of property and a conditional sale contract with respect thereto are to be construed as an absolute conveyance from one party to another, and a contract to reconvey from the latter to the former, or whether they constitute a mortgage, is, in an action at law where the evidence is conflicting, for the jury. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Mortgage, Evidence Showing.**

The facts were sufficient to warrant a holding that a deed and contract given at the same time should be construed together as one transaction, and not as a separate and distinct transaction, and that they constituted a mortgage. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933); *Jaussaud v. Samuels*, 58 Idaho 191, 71 P.2d 426 (1937).

### **Pledge of Lease.**

Where a lease has been recorded as a chattel mortgage, a delivery of a copy thereof to a party having a second mortgage on a portion of the leased property constitutes a sufficient delivery of the lease as to amount to a valid pledge thereof. *Gem State Lumber Co. v. Galion Irrigated Land Co.*, 55 Idaho 314, 41 P.2d 620 (1935).

### **Sale of Mortgaged Property.**

If mortgagor in arrears on chattel mortgage covering harvester transfers harvester by bill of sale to party who advances money to pay off mortgage, and mortgagor agrees to pay back amount advanced, such transaction does not constitute a sale of mortgaged property. *State v. Snyder*, 71 Idaho 454, 233 P.2d 802 (1951).

### **Security.**

In the absence of an intent that an instrument should be treated as security only for debt, it will not be held to be a mortgage. *Northwestern & Pac. Hypotheekbank v. Nord*, 56 Idaho 86, 50 P.2d 4 (1935).

A security instrument, however it is called, is a mortgage whenever real property is encumbered as security for a debt or liability. *Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (1983).

### **Sufficiency of Evidence.**

In order to establish a transaction as one constituting a mortgage, the evidence must be clearly convincing and satisfactory. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933).

The question is whether a bill of sale of property and a conditional sale contract with respect to the same property are a chattel mortgage or an absolute conveyance from one to another, with a contract to reconvey, and the evidence was sufficient to require the submission of the issues to a jury. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Trust Defined.**

Transfer in trust mentioned by this section is one which creates a trust and absolutely conveys title from grantor, and not a deed of trust which hypothecates property for payment of the debt. *Brown v. Bryan*, 6 Idaho 1, 51 P. 995 (1896).

### **What Constitutes Mortgage.**

Deed absolute on its face and a separate agreement bearing same date as deed, for a reconveyance of the same tract of land to grantor upon payment of the consideration named in the deed, by specified time, constitute together a mortgage. *Kelly v. Leachman*, 3 Idaho 392, 3 Idaho 629, 29 P. 849, 33 P. 44 (1892); *Wilson v. Thompson*, 4 Idaho 678, 43 P. 557 (1896).

Where deed, absolute on its face, has been executed to secure payment of a debt, and it is clearly and satisfactorily established that instrument was intended only as security and that it is therefore only a mortgage, title to property remained in grantor. *Hannah v. Vensel*, 19 Idaho 796, 116 P. 115 (1911).

Where instrument in writing in the form of deed of conveyance is executed and delivered as security for a debt, such instrument becomes a

mortgage and not a deed, notwithstanding form of instrument. **Bergen v. Johnson**, 21 Idaho 619, 123 P. 484 (1912).

Warranty deeds, executed and delivered by insolvent debtor to corporation, to which he was largely indebted at the time, to secure debt, held, in effect, mortgages. **Capital Lumber Co. v. Saunders**, 26 Idaho 408, 143 P. 1178 (1914).

Mortgage may be created by transfer of certain material to L. under a written contract providing that L. shall sign a note as security for B., who shall thereupon buy such material in the name of and for the sole use and benefit of L., and that, upon payment of the note, L. shall deliver and sell material to a third party, such transfer being for security only. **Larsen v. Roberts**, 32 Idaho 587, 187 P. 941 (1919).

Deed cannot be declared a mortgage unless there is a debt personal in its nature and enforceable against parties independent of security. **Clinton v. Utah Constr. Co.**, 40 Idaho 659, 237 P. 427 (1925).

**Cited** **Roos v. Belcher**, 79 Idaho 473, 321 P.2d 210 (1958).



**§ 45-905. Defeasance may be shown by parol.** — The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a trustee under any trust deed or transfer in trust, or a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

**History.**

R.S., § 3354; reen. R.C. & C.L., § 3392; C.S., § 6359; I.C.A., § 44-805; am. 1957, ch. 181, § 19, p. 345.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**CASE NOTES**

Conclusion not a statement of fact.

Deed absolute as mortgage.

Evidence.

— Form of instrument.

— Purpose of instrument.

Foreclosure.

Indebtedness as test.

Innocent third parties.

Intention of parties.

Questions of fact.

Sale of mortgaged property.

**Conclusion Not a Statement of Fact.**

A statement in an agreement by one of the parties that he had no interest in the realty covered by the agreement constitutes a mere conclusion and is not a statement of fact. *Jaussaud v. Samuels*, 58 Idaho 191, 71 P.2d 426 (1937).

### **Deed Absolute as Mortgage.**

Warranty deeds executed and delivered by insolvent debtor to corporation to which he was largely indebted at the time, to secure the debt were held, in effect, mortgages. *Capital Lumber Co. v. Saunders*, 26 Idaho 408, 143 P. 1178 (1914).

Whether or not deed absolute in form is mortgage is mixed question of law and fact to be determined from all evidence, written or parol; and, in determining it, all facts and circumstances attending transaction should be considered. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

Rule applies whether or not deed is warranty deed and whether deed is accompanied by condition or matter of defeasance expressed in deed, contained in separate instrument or existing merely in parol. *Wright v. Rosebaugh*, 46 Idaho 526, 269 P. 98 (1928).

In determining whether instrument is conveyance or mortgage, determining question is whether or not debt is paid on execution and delivery of deed. *Investors Mtg. Secur. Co. v. Hamilton*, 51 Idaho 113, 4 P.2d 347 (1931).

Under this section, parol evidence was admissible to show that purported deeds were in fact mortgages and so intended by the parties. *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966).

### **Evidence.**

Parol evidence is admissible to show that deed absolute on its face is, in fact, a mortgage. *Thompson v. Burns*, 15 Idaho 572, 99 P. 111 (1908); *Investors Mtg. Secur. Co. v. Hamilton*, 51 Idaho 113, 4 P.2d 347 (1931); *Smith v. Swendsen*, 57 Idaho 715, 69 P.2d 131 (1937).

In the instant case, the facts were held sufficient to warrant a holding that a deed and contract given at the same time should be construed together as one transaction, and not as a separate and distinct transaction, and that they

constituted a mortgage. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933); *Jaussaud v. Samuels*, 58 Idaho 191, 71 P.2d 426 (1937).

The exclusion of evidence of the intention of the parties that a deed was intended as a mortgage was not prejudicial in view of evidence that was admitted of indebtedness of the grantors to the grantee before and after the conveyance, of lack of monetary payment by the grantee to the grantors, and the grantee's cancellation of a note and mortgage at the time of the conveyance without extinguishment of the debt. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

An option, when exercised, is a contract for the conveyance of property; however, a conveyance which appears absolute in form may be shown by extrinsic evidence actually to be security for a debt. The proof must be by clear and convincing evidence. *McGill v. Lester*, 108 Idaho 561, 700 P.2d 964 (Ct. App. 1985).

Where the grantee denied that she promised to convey the property back to the original owner, but conceded being informed of his previous ownership and that the third party, who conveyed the deed to her, had agreed to reconvey it to the original owner, the grantee could not be said to have taken the deed "without notice," and therefore did not come within the exception of this section. Parol evidence on the question of defeasance was admissible. *Kreientsieck v. Cook*, 108 Idaho 657, 701 P.2d 277 (Ct. App. 1985).

#### — Form of Instrument.

Upon a proper showing, the form of an instrument yields to its underlying purpose: a deed may be shown actually to be a mortgage; the apparent conveyance of an ownership interest under an installment sale contract may be shown actually to be the creation of a security interest; and an option may be shown to merely secure a debt. *McGill v. Lester*, 108 Idaho 561, 700 P.2d 964 (Ct. App. 1985).

#### — Purpose of Instrument.

The criteria for evaluating whether the purpose of an instrument is the creation of a security interest are: (a) the existence of a debt to be secured; (b) survival of the debt after execution of the instrument in question; (c) any previous negotiations of parties; (d) the inadequacy of consideration for an

outright conveyance; (e) the financial condition of the purported grantor; and (f) the intention of the parties. *McGill v. Lester*, 108 Idaho 561, 700 P.2d 964 (Ct. App. 1985).

### **Foreclosure.**

Where a transaction amounts to a mortgage, it must be foreclosed to satisfy the debt secured thereby. *Jaussaud v. Samuels*, 58 Idaho 191, 71 P.2d 426 (1937).

### **Indebtedness as Test.**

Deed absolute on its face cannot be held to be a mortgage unless there is a debt to be secured thereby, and evidence must be clear that it was not a sale. *Bergen v. Johnson*, 21 Idaho 619, 123 P. 484 (1912); *Shaner v. Rathdrum State Bank*, 29 Idaho 576, 161 P. 90 (1916).

The test to determine whether an instrument is a mortgage or absolute conveyance is whether, at the time of the execution thereof, there was a debt owing from the giver of such instrument to the grantee or vendee therein, and whether such debt existed after the execution of the instrument. *Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905 (1933).

Before an instrument, purporting to be an absolute conveyance on its face, can be construed as a mortgage or security, it is indispensable that there be an existing indebtedness. *Fond v. McCreery*, 55 Idaho 144, 39 P.2d 766 (1934).

### **Innocent Third Parties.**

Proof cannot be made against innocent purchasers and encumbrancers that deed absolute on its face was intended as a mortgage, unless that fact appears from the terms of the instrument itself. *Hannah v. Vensel*, 19 Idaho 796, 116 P. 115 (1911).

### **Intention of Parties.**

Whether instrument sued upon is a conditional sale note or a chattel mortgage, and whether or not respondent has mistaken his remedy, are questions which are dependent upon agreement of parties at time transaction was entered into and must be decided from all facts and circumstances which will tend to show intent of parties. *Keane v. Kibble*, 28 Idaho 274, 154 P. 972 (1915).

Where written instruments are uncertain or ambiguous, parol evidence may be admitted to show the true intent of the parties. *Smith v. Swendsen*, 57 Idaho 715, 69 P.2d 131 (1937).

### **Questions of Fact.**

Where question is whether a bill of sale of property and a conditional sale contract with respect to the same property, are a chattel mortgage or an absolute conveyance from one to another, with a contract to reconvey, the evidence was sufficient to require the submission of the issues to a jury. *Deichert v. Euerby*, 54 Idaho 14, 27 P.2d 981 (1933).

### **Sale of Mortgaged Property.**

If mortgagor in arrears on chattel mortgage covering harvester transfers harvester by bill of sale to party who advances money to pay off mortgage, and mortgagor agrees to pay back amount advanced, such transaction does not constitute a sale of mortgaged property. *State v. Snyder*, 71 Idaho 454, 233 P.2d 802 (1951).

**Cited** *In re Gould*, 78 Bankr. 590 (D. Idaho 1987); *Hogg v. Wolske*, 142 Idaho 549, 130 P.3d 1087 (2006).

**§ 45-906. Extent of mortgage lien.** — A mortgage is a lien upon everything that would pass by a grant or conveyance of the property.

**History.**

R.S., § 3355; reen. R.C. & C.L., § 3393; C.S., § 6360; I.C.A., § 44-806.

**CASE NOTES**

Effect of mortgage lien.

Errors in mortgages.

Law as part of mortgage.

Life of mortgage lien.

Third parties.

**Effect of Mortgage Lien.**

Mortgage, or any contract or instrument made only as security for payment of a debt, merely creates a lien on property therein described and leaves legal title in mortgagor or grantor, which title can only be divested by judicial sale in a suit or action under and in conformity with the statute. *Hannah v. Vensel*, 19 Idaho 796, 116 P. 115 (1911).

Chattel mortgage conveys no title to mortgagee, but gives mere lien on property mortgaged, as security. *Forbush v. San Diego Fruit & Produce Co.*, 46 Idaho 231, 266 P. 659 (1928).

**Errors in Mortgages.**

The conclusion reached by the trial court that Securities Credit Corporation was a general creditor was correct, acknowledgments to the chattel mortgages being void and the instruments not meeting the requirements by being properly acknowledged and lawfully filed under the chattel mortgage section. A judgment having been entered for the disposition for the property prevents the defendant from now availing himself of the statute by correcting the errors in mortgages. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

### **Law as Part of Mortgage.**

It is well settled that the law existing when a mortgage is made enters into and becomes a part of the contract. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

### **Life of Mortgage Lien.**

The life of a mortgage does not cease to exist so long as the notes secured by it are actionable, for the reason that the mortgage is an incident to the debt. So long as the note secured by a mortgage is kept alive, then it is actionable, and a note is kept alive either by the obligee signing an agreement promising payment, or making payment on principal or interest, and the mortgage lien will continue and remain unimpaired for five years thereafter. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

### **Third Parties.**

As between the parties, the chattel mortgages are enforceable and will be given full weight even though ineffective as to third persons because of lack of notice. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

**Cited** *Kelly v. Leachman*, 3 Idaho 629, 33 P. 44 (1893); *Federal Land Bank v. Parsons*, 116 Idaho 545, 777 P.2d 1218 (Ct. App. 1989); *Federal Land Bank v. Parsons*, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

**§ 45-907. Subsequent title inures to mortgagee.** — Title acquired by a mortgagor subsequent to the execution of the mortgage or by a grantor subsequent to the execution of the trust deed inures to the mortgagee or trustee in like manner as if acquired before the execution.

**History.**

R.S., § 3356; reen. R.C. & C.L., § 3394; C.S., § 6361; I.C.A., § 44-807; am. 1957, ch. 181, § 20, p. 345.

**CASE NOTES**

**Application.**

Title acquired through subsequent quitclaim deed.

**Application.**

Where mortgage of a steam-actuated pumping plant, permanently affixed to mining ground, and appurtenances, is held to cover land upon which plant is located and which is necessary to its convenient and proper use, fact that mortgagors did not acquire legal title to such land until after mortgage was given does not prevent application of mortgage thereto. *Muckle v. Hill*, 32 Idaho 661, 187 P. 943 (1920).

Water right not in esse at time of execution of conveyance and hence not mentioned therein, but which was subsequently acquired, becomes appurtenant to land and will pass with title acquired under mortgage foreclosure. *Molony v. Davis*, 40 Idaho 443, 233 P. 1000 (1925).

This section has been held to apply to title acquired under homestead laws, although title was in United States when mortgage was given. *Bashore v. Adolph*, 41 Idaho 84, 238 P. 534 (1925).

Any title passing to defendant prior to decree in foreclosure inures to benefit of mortgagee foreclosing under this section. *State v. Gladish*, 48 Idaho 711, 284 P. 1034 (1930).

**Title Acquired Through Subsequent Quitclaim Deed.**



Where owner mortgages realty, and subsequently acquires a better title to the property purportedly mortgaged, the title subsequently acquired inures to the benefit of the mortgagee. *Booth v. Shepherd*, 63 Idaho 523, 123 P.2d 422 (1942).

**§ 45-908. Power of attorney to mortgage.** — A power of attorney to execute a mortgage, or deed of trust must be in writing, subscribed, acknowledged, or proved, certified and recorded in like manner as powers of attorney for grants of real property.

**History.**

R.S., § 3357; reen. R.C. & C.L., § 3395; C.S., § 6362; I.C.A., § 44-808; am. 1957, ch. 181, § 21, p. 345.

**CASE NOTES**

**Cited** *McKay v. Walker*, 160 Idaho 148, 369 P.3d 926 (2016).

**§ 45-909. Recording assignment of mortgage.** — An assignment of a mortgage may be recorded in like manner as a mortgage and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

**History.**

R.S., § 3358; reen. R.C. & C.L., § 3396; C. S., § 6363; I.C.A., § 44-809; am. 1935, ch. 19, § 1, p. 37; am. 1967, ch. 272, § 14, p. 745.

**STATUTORY NOTES**

**Effective Dates.**

Section 32 of S.L. 1967, chapter 272, provided that the act took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

**CASE NOTES**

**Unrecorded Lien of Assignee.**

Assignee not recording assignment lost lien as against subsequent purchaser of property who purchased without notice of assignee's claim and in reliance on recorded release by mortgagee. *Millick v. O'Malley*, 47 Idaho 106, 273 P. 947 (1928).

**§ 45-910. Record of assignment not notice to mortgagor.** — The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

**History.**

R.S., § 3359; reen. R.C. & C.L., § 3397; C.S., § 6364; I.C.A., § 44-810.

**§ 45-911. Assignment of debt carries security.** — The assignment of a debt secured by mortgage carries with it the security.

**History.**

R.S., § 3360; reen. R.C. & C.L., § 3398; C.S., § 6365; I.C.A., § 44-811.

**CASE NOTES**

**Assignment Without Authority.**

Where an administrator assigned the debt, evidenced by a nonnegotiable note, secured by mortgage without authorization of probate court, as required, the assignee received no title to the security and had no right to foreclose the mortgage, under this section, since the title and right to sue on the note did not pass to assignee. *Cummings v. Lowe*, 52 Idaho 1, 10 P.2d 1059 (1932).

**§ 45-912. Marginal discharge of mortgage.** — A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgement in form substantially as follows:

“Signed and acknowledged before me this .... day of .... in the year of .....

“A. B., Recorder.”

### **History.**

1863, p. 528, § 36; R.S., § 3361; am. 1895, p. 54, § 1; reen. 1899, p. 249, § 1; reen. R.C. & C.L., § 3399; C.S., § 6366; I.C.A., § 44-812; am. 1967, ch. 272, § 15, p. 745.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

Section 33 of S. L. 1967, ch. 272 provided that contracts entered into before such date could be enforced as if the amendment had not occurred.

### **Effective Dates.**

Section 32 of S. L. 1967, ch. 272, provided that the act, which amended various sections of this chapter to eliminate its application to personal property, took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

## **CASE NOTES**

Application.

Discharge of lien.

Subsequent mortgagee.

Application.

In order to warrant discharge, terms of statute must be observed. *Walker v. Farmers' Bank*, 41 Idaho 279, 238 P. 968 (1925).

### **Discharge of Lien.**

Lien of mortgage which is not discharged by marginal entry, as provided by this section or on certificate as provided in the following section, or by decree of court, remains in force. *Kelly v. Leachman*, 3 Idaho 629, 33 P. 44 (1893).

Mortgage must be discharged in one of three ways: 1. by entry in margin of record; 2. by certificate signed by mortgagee; 3. by decree of competent court. *Kelly v. Leachman*, 3 Idaho 629, 33 P. 44 (1893); *Walker v. Farmers' Bank*, 41 Idaho 279, 238 P. 968 (1925); *International Mtg. Bank v. Whitaker*, 44 Idaho 178, 255 P. 903 (1927); *Merchants Trust Co. v. Davis*, 49 Idaho 494, 290 P. 383 (1930).

Execution of renewal note and mortgage on same property accompanied by return of original note and copy of mortgage, marked "paid," does not discharge lien of first mortgage where it remains undischarged by one of the methods provided by statute. *Walker v. Farmers' Bank*, 41 Idaho 279, 238 P. 968 (1925).

Taking second mortgage to secure same debt covered by first upon renewal of note secured by it, and upon same property, does not operate as satisfaction or release in law of first mortgage. *Walker v. Farmers' Bank*, 41 Idaho 279, 238 P. 968 (1925).

Execution of new mortgages, with understanding that original mortgage would be discharged if abstract of title showed new mortgages to be first and prior liens, did not amount to renewal and discharge of original mortgage as bearing on priority of lien for materials furnished before execution of new mortgages. *International Mtg. Bank v. Whitaker*, 44 Idaho 178, 255 P. 903 (1927).

### **Subsequent Mortgagee.**

Subsequent mortgagee not making proper inquiry with respect to unreleased first mortgage was not entitled to protection as bona fide purchaser. *Merchants Trust Co. v. Davis*, 49 Idaho 494, 290 P. 383 (1930).

**§ 45-913. Discharge of mortgage on certificate.** — A recorded mortgage if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, satisfied or discharged: provided, that whenever a bank or the person appointed to liquidate the affairs of a bank as provided in section 26-908 [26-1010, Idaho Code], has failed or neglected to issue a certificate showing the release, discharge or satisfaction of a real mortgage, the director of the department of finance, or his successor in office, may, upon the request of the owner, or any subsequent owner, or party in interest, issue to such party his certificate showing such mortgage to have been paid, discharged or satisfied even though the affairs of said bank have been completely liquidated.

**History.**

1863, p. 528, § 37; R.S., § 3362; am. 1895, p. 54, § 2; reen. 1899, p. 249, § 2; reen. R.C. & C.L., § 3400; C.S., § 6367; I.C.A., § 44-813; am. 1945, ch. 91, § 1, p. 140; am. 1967, ch. 272, § 16, p. 745.

**STATUTORY NOTES**

**Cross References.**

Director of department of finance, § 67-2701.

Mortgages and releases of mortgages to be recorded by county recorder, § 31-2402.

Notices of mechanics' liens to be indexed by county recorder, § 31-2404.

Recording transfers, § 55-801 et seq.

**Compiler's Notes.**

The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286,



§ 1 and S.L. 1974, ch. 40, § 3 (§ 67-2403).

The bracketed insertion near the middle of the section was added by the compiler. Section 26-908 was repealed by S.L. 1979, ch. 41, § 1. Section 26-1010 now empowers the director of the department of finance to employ agents to assist in the liquidation of a bank's assets.

**Effective Dates.**

Section 2 of S. L. 1945, ch. 91 declared an emergency. Approved Feb. 28, 1945.

Section 32 of S.L. 1967, ch. 272, provided that the act took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

**§ 45-914. Record of discharge.** — A certificate of the discharge of a real estate mortgage must be recorded, and a reference made in the record book to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

**History.**

1863, p. 528, § 38; R.S., § 3363; reen. R.C. & C.L., § 3401; C.S., § 6368; am. 1927, ch. 128, § 1, p. 171; I.C.A., § 44-814; am. 1951, ch. 251, § 4, p. 540; am. 1959, ch. 72, § 4, p. 157; am. 1967, ch. 272, § 17, p. 745.

**STATUTORY NOTES**

**Effective Dates.**

Section 32 of S. L. 1967, ch. 272, provided that the act took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

**§ 45-915. Mortgage — Satisfaction — Failure to release of record — Penalty.** — When any mortgage, affecting the title to real property, has been satisfied, the holder thereof or his assignee must immediately, on the demand of the mortgagor, purchaser, or the successor in interest of either, execute, acknowledge, and deliver to him a certificate of the discharge thereof so as to entitle it to be recorded, or he must enter satisfaction or cause satisfaction of such mortgage or affecting the title to real property, to be entered of record; and any holder, or assignee of such holder, who refuses to execute, acknowledge, and deliver to the mortgagor, purchaser, or the successor in interest of either, the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, purchaser, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of \$100.

**History.**

1863, p. 528, § 39; R.S., § 3364; reen. R.C. & C.L., § 3402; C.S., § 6369; I.C.A., § 44-815; am. 1943, ch. 100, § 1, p. 194; am. 1967, ch. 272, § 18, p. 745.

**STATUTORY NOTES**

**Effective Dates.**

Section 32 of S.L. 1967, ch. 272, provided that the act took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code. See note to § 45-912.

**CASE NOTES**

Accrual of action.

Accrual of interest.

Actions for penalties and damages.

— Evidence.

— Questions of fact.

— Right of action.

Appeal.

Attorney's fees.

Construction and application.

Elements of damage.

Pleading.

Tender necessary.

Trial by jury.

Usurious mortgages.

### **Accrual of Action.**

Cause of action given by this section does not accrue until mortgage debt has been fully paid and demand for a discharge of mortgage has been made. *Barnes v. Pitts Agric. Works*, 6 Idaho 259, 55 P. 237 (1898).

### **Accrual of Interest.**

When a tender properly conditioned on delivery of a reconveyance deed has been made, no further interest accrues on the debt, regardless of the length of time that the trustee may take to deliver the reconveyance. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

A grantor of a deed of trust may condition a tender of full payment upon the contemporaneous delivery of a deed or reconveyance, and that such condition does not vitiate the tender's effectiveness to terminate the accrual of interest. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

### **Actions for Penalties and Damages.**

#### **— Evidence.**

In an action to quiet title and for the penalty for failure to satisfy a mortgage, wherein defendant filed a cross-complaint on the mortgage, the evidence was sufficient to show that the plaintiffs were indebted to the defendant for a balance of instalments due, taxes, and outlay for bringing the abstract up-to-date, and that there existed a bona fide controversy

concerning the amount due, and the court was justified in refusal to impose penalty for failure to satisfy a mortgage. *Platts v. Pacific First Federal Savings & Loan Ass'n*, 62 Idaho 340, 111 P.2d 1093 (1941).

In an action for penalties and damages for a failure to satisfy mortgages, copies of the mortgagee's inter-office requests for releases of the mortgages involved and return memorandum containing such releases allegedly mailed to the mortgagor, were admissible only for the purpose of impeaching the testimony of the mortgagor that he had received no releases. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

In an action by a farm implements dealer for damages for a mortgagee's failure to satisfy chattel mortgages, the dealer's testimony of the value of contracts of employment, which he testified he was prevented from obtaining because the chattel mortgages in question had not been released, was improperly excluded. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

A judgment for penalties and damages for failure to satisfy mortgages was not reversible on the theory that, notwithstanding conditional sales contracts were removed from the jury's consideration, their baneful effect remained. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

Complaint for damages for failure to release chattel mortgages based on loss of profits for contemplated purchase of bred ewes was not proved, where evidence showed that plaintiff was not in the sheep business at the time of the contemplated transaction and had not been for some years past. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

Plaintiff under count for statutory penalty for failure to release mortgage established a prima facie case of lack of good faith where there was evidence that defendant stated his refusal in following language: "that's my business, I will release them when I get d— good and ready to, to h— with you" and that when subsequently approached over the phone for release he was just mum and hung up the phone. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

— Questions of Fact.

In an action for penalties and damages for failure to satisfy mortgages, whether the mortgagee's defense that valid releases had been received by the mortgagor was established was for the jury. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

In an action for penalties and damages for failure to satisfy a mortgage, whether the mortgagor's request of the mortgagee to satisfy the mortgage was sufficient was a question for the jury. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

The mortgagee is not liable for statutory penalty for failure to release mortgage if there is a bona fide controversy over the amount due, and refusal to release is in good faith. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

Mortgagee was not excused from executing a joint release of six mortgages on the ground that there was a balance due on the last mortgage, where the evidence showed that mortgagee owed the mortgagor on a running account. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

Refusal of mortgagee to release six mortgages could not be excused on the ground that there was no consideration for one of the mortgages, since a mortgage is not fraudulent merely because there is lack of consideration, and furthermore question of fraud can only be raised by the creditors in a proper proceeding. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

### **— Right of Action.**

The statute permitting a mortgagor to recover penalties and damages for the mortgagee's failure to satisfy a mortgage gives the mortgagor a cause of action, notwithstanding he has disposed of the mortgaged property. *Henderson v. Allis-Chalmers Mfg. Co.*, 65 Idaho 570, 149 P.2d 133 (1943).

### **Appeal.**

Mortgagor was entitled to a joint release of mortgages where the trial court entered an order that the clerk should enter of record satisfaction of the mortgages from which order the mortgagee made no appeal. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

### **Attorney's Fees.**

Attorney's fees incurred in action to compel cancellation of usurious mortgage after payment of principal are recoverable as damages. *Cornelison v. United States Bldg. & Loan Ass'n*, 50 Idaho 1, 292 P. 243 (1930).

In a proceeding under this section for damages attorney fees are allowable in a proper case. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

Where mortgages were canceled as part of a judgment rendered on respondents' fourth cause of action, the proceedings on such cause of action are the matters to be considered in determining the reasonable amount of damages representing attorneys fees incurred by respondents and the allowance by the trial court of the sum of \$2,500 damages representing reasonable attorneys fees for the trial of such fourth cause of action was held not to be excessive. *Head v. Crone*, 79 Idaho 544, 324 P.2d 996 (1958).

Attorneys fees incurred as the result of the necessity of bringing an action under this section, for the statutory penalty and for damages for wilful refusal to satisfy mortgages of record after payment of indebtedness due, are recoverable. *Head v. Crone*, 79 Idaho 544, 324 P.2d 996 (1958).

### **Construction and Application.**

In action to foreclose mortgage, where it appears that mortgage was fraudulent, or, if not fraudulent, has been fully paid, and demand was made for release of same, and holder refuses to make release, a case is presented where the statute should be enforced. *Blackfoot State Bank v. Crisler*, 20 Idaho 379, 118 P. 775 (1911); *Cornelison v. United States Bldg. & Loan Ass'n*, 50 Idaho 1, 292 P. 243 (1930).

This section is penal and should be strictly construed; hence, penalty should not be imposed where facts obviously indicate a substantial controversy. *Harding v. Home Inv. & Sav. Co.*, 49 Idaho 64, 286 P. 920, 297 P. 1101 (1930).

### **Elements of Damage.**

Plaintiff in an action for specific performance of a land contract cannot claim damages for the interest paid on the money borrowed to pay the purchase price, when he seeks and is permitted damages for the loss of use of the property. *Dohrman v. Tomlinson*, 88 Idaho 313, 399 P.2d 255 (1965).

Plaintiffs cannot be permitted to recover damages under this section for not being able to sell at a profit the same property in which they have been allowed damages for the loss of its use. *Dohrman v. Tomlinson*, 88 Idaho 313, 399 P.2d 255 (1965).

### **Pleading.**

Complaint to recover the penalty prescribed by this section must contain a direct and unequivocal allegation of payment of amount secured by mortgage; allegation that plaintiff has fully paid and satisfied the notes and mortgage insofar as holder of said notes and mortgage is concerned is insufficient. *Gamble v. Canadian & Am. Mfg. & Trust Co.*, 6 Idaho 202, 55 P. 241 (1898).

### **Tender Necessary.**

One who claims to have made a tender is not entitled to damages under this section, for mortgagee's refusal to satisfy a mortgage, where facts show that a sufficient tender was not made. *Machold v. Farnan*, 20 Idaho 80, 117 P. 408 (1911).

The mortgagor under this section is not required to tender fees for the preparation and recording of a release once a mortgage is satisfied and a release demanded — even though terms of mortgage required expense of making and recording a release to be paid by the mortgagor. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

### **Trial by Jury.**

Parties have absolute right to trial by jury. *Stevens v. Home Sav. & Loan Ass'n*, 5 Idaho 741, 51 P. 779 (1898).

Plaintiff is entitled to jury trial in an action filed to recover damages and penalty for failure of defendant to release mortgage. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

### **Usurious Mortgages.**

Mortgage given to secure payment of usurious contract is satisfied upon the payment of principal debt, whereupon mortgagor is entitled to a satisfaction of such mortgage of record, and an action for such relief will lie under this section. *Cleveland v. Western Loan & Sav. Co.*, 7 Idaho 477, 63 P. 885 (1901); *Anderson v. Oregon Mtg. Co.*, 8 Idaho 418, 69 P. 130 (1902).



**Cited** Barnes v. Buffalo Pitts Co., 6 Idaho 519, 57 P. 267 (1899); Portneuf Lodge No. 20 v. Western Loan & Sav. Co., 6 Idaho 673, 59 P. 362 (1899); Later v. Haywood, 14 Idaho 45, 93 P. 374 (1908); McDonald v. Challis, 22 Idaho 749, 128 P. 570 (1912).

**§ 45-916. Application to real property only.** — The provisions of this chapter shall apply to mortgages of real property only.

**History.**

**I.C., § 45-916**, as added by 1967, ch. 272, § 19, p. 745.

**STATUTORY NOTES**

**Effective Dates.**

Section 32 of S.L. 1967, chapter 272, provided that the act took effect at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code. See note to § 45-912.



## Chapter 10

# MORTGAGE OF REAL PROPERTY

Sec.

45-1001. What may be mortgaged.

45-1002. Independent defeasance to be recorded.

45-1003. Acknowledgment and recordation.

45-1004. Recording master forms — Incorporation of provisions into mortgages by reference — Recording fees.

**§ 45-1001. What may be mortgaged.** — Any interest in real property which is capable of being transferred may be mortgaged.

**History.**

R.S., § 3375; reen. R.C. & C.L., § 3403; C.S., § 6370; I.C.A., § 44-901.

**STATUTORY NOTES**

**Cross References.**

Partition of real estate, application of proceeds of sale when property encumbered, § 6-520; resort to other securities compelled, § 6-521.

**CASE NOTES**

Installment contract purchase of land.

Interest in property.

Property subject to mortgage.

**Installment Contract Purchase of Land.**

Vendees buying land under installment contract possessed a mortgagable interest in the property in question. *Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (1983).

**Interest in Property.**

Where the execution sale divested the judgment debtor of all the real property awarded him by the partition order, except for his right of redemption, and he conveyed that away two days after the sale, since he had no interest in the property awarded him he could not be compelled to execute a mortgage on that property. *Suchan v. Suchan*, 113 Idaho 102, 741 P.2d 1289 (1986).

**Property Subject to Mortgage.**

Certificates of sale of school lands may be mortgaged. *Perkins v. Bundy*, 42 Idaho 560, 247 P. 751 (1926).

Interest of vendee under contract to purchase real estate is interest in land that may be transferred and, hence, may be mortgaged. *Perkins v. Bundy*, 42 Idaho 560, 247 P. 751 (1926); *Fulton v. Duro*, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984); *Old Stone Capital Corp. v. John Hoene Implement Corp.*, 647 F. Supp. 916 (D. Idaho 1986).

**Cited** *Fulton v. Duro*, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984); *Old Stone Capital Corp. v. John Hoene Implement Corp.*, 647 F. Supp. 916 (D. Idaho 1986).

**§ 45-1002. Independent defeasance to be recorded.** — When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, is recorded in the office of the county recorder of the county where the property is situated.

**History.**

R.S., § 3376; reen. R.C. & C.L., § 3404; C.S., § 6371; I.C.A., § 44-902.

**§ 45-1003. Acknowledgment and recordation.** — Mortgages, and deeds of trust or transfers in trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants and conveyances thereof.

**History.**

R.S., § 3377; reen. R.C. & C.L., § 3405; C.S., § 6372; I.C.A., § 44-903; am. 1957, ch. 181, § 22, p. 345.

**STATUTORY NOTES**

**Cross References.**

Recordation of conveyances, § 55-801 et seq.

**Compiler's Notes.**

Section 24 of S.L. 1957, ch. 181 read: "If any clause, sentence, paragraph, section, or any part or portion of this act shall be declared or adjudged to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this act."

**Effective Dates.**

Section 25 of S.L. 1957, ch. 181 declared an emergency. Approved March 9, 1957.



**§ 45-1004. Recording master forms — Incorporation of provisions into mortgages by reference — Recording fees.** — (1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county recorder of any county, and the recorder of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a “Master form recorded by . . . (name of person causing the instrument to be recorded).” Such instrument need not be acknowledged or proved or certified to be entitled to record.

(2) When any such instrument is recorded, the recorder shall index it under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real property.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real property situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or part thereof, identified by its title as hereinabove provided and stating the date when it was recorded and the book and page where it was recorded, preceded by the words “do not record” or “not to be recorded,” and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear from a

photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded; in such case the recorder shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

(5) For the purpose of any provision of law relating to fees for recording, entering or indexing, or relating to searches, furnishing of certified copies, reproduction, or destruction of records, or to any other matter pertaining to the powers and duties of recorders, except the manner of indexing thereof, the master form instrument herein provided for shall be deemed a conveyance.

**History.**

I.C., § 45-1004, as added by 1967, ch. 97, § 1, p. 206.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.



## Chapter 11

### AIRCRAFT IMPROVEMENT LIENS

Sec.

45-1101. Aircraft improvement lien — Special lien dependent upon possession.

45-1102. Surrender of possession — Statutory lien.

45-1103. Notice of lien — Recordation.

45-1104. Persons considered owner of aircraft or related equipment, or authorized agent of owner.

45-1105. Priority.

45-1106. Enforcement of lien.

45-1107. Release or discharge of lien.

**§ 45-1101. Aircraft improvement lien — Special lien dependent upon possession.** — (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, spare parts, or related equipment, at the request of its owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, has a special lien, dependent upon possession, on the aircraft for the just and reasonable charges for the labor performed and material furnished up to the amount of the written estimate or subsequent oral or written modifications thereto.

(2) Provided however, a person, firm, or corporation expending labor, skill or materials pursuant to the provisions of subsection (1) of this section shall not have a special lien on the aircraft unless the person, firm, or corporation delivers a written estimate regarding the nature and cost of repair work to the owner, reputed owner, authorized agent of the owner or lawful possessor of the aircraft prior to expending labor, skill or materials on the aircraft.

(3) If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction after first providing written notice of the impending sale to the owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, as well as any known secured parties or lienholders, by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail. The person, firm or corporation shall give ten (10) days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the other secured parties or lienholders, if any, and the owner. Provided however, that the person, firm or corporation who is about to make, alter or repair the aircraft or related equipment, in order to derive the benefits of this section, must, before commencing such making, altering or repairing, give notice of the intention

to so make, alter or repair the aircraft or related equipment, by registered mail, to any holder of a security interest which is of record at the FAA, at least three (3) days before commencing the making, altering or repairing, and if notice in writing within the three (3) days is not given by the holder of a security interest notifying such person, firm or corporation not to perform such services, then the making, altering or repairing may proceed and the prior lien provided for herein attaches to the aircraft or related equipment.

**History.**

I.C., § 45-1101, as added by 2002, ch. 371, § 1, p. 1041.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1101, which comprised 1885, p. 74, § 1; R.S., § 3385; am. 1897, p. 6, § 1; reen. 1899, p. 292, § 1; reen. R.C. & C.L., § 3407; C.S., § 6373; am. 1925, ch. 76, § 1, p. 109; I.C.A., § 44-1001, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.

**Compiler's Notes.**

For further information about the FAA aircraft registry, referred to in the last sentence, see <https://registry.faa.gov/aircraftinquiry>.

**§ 45-1102. Surrender of possession — Statutory lien.** — (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, or spare parts, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor of the aircraft, has a lien upon the aircraft, or related equipment, for the contract price of the expenditure, or in the absence of a contract price, for the reasonable value of the expenditure.

(2) The statutory lien created pursuant to this section:

(a) Is applicable to any civil aircraft engine, aircraft propeller, or aircraft appliance which is capable of having the ownership, or an interest in the ownership, affected by a conveyance, recorded at the federal aviation administration (FAA) aircraft registry;

(b) Is not dependent upon possession by the repairperson of the property which is subject to the lien;

(c) Is dependent upon the recordation of the lien at the FAA aircraft registry in accordance with [section 45-1103, Idaho Code](#);

(d) Must be created by written contract between the parties, and any subsequent oral or written modifications thereto. The written contract must be signed by the customer, and predate the commencement of work for which the lien is applicable.

### **History.**

[I.C., § 45-1102](#), as added by 2002, ch. 371, § 1, p. 1041.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 45-1102, which comprised 1899, p. 292, § 1; reen. R.C. & C.L., § 3407; C.S., § 6374; I.C.A., § 44-1002; am. 1967, ch. 272, § 20, p. 745, was repealed by S.L. 1985, ch. 229, § 1.

### **Compiler's Notes.**

For further information about the FAA aircraft registry, referred to in subsection (2), see *<https://registry.faa.gov/aircraftinquiry>*.

The abbreviation enclosed in parentheses so appeared in the law as enacted.



**§ 45-1103. Notice of lien — Recordation.** — The statutory lien created pursuant to [section 45-1102, Idaho Code](#):

(1) Is not valid unless and until it is recorded with the FAA aircraft registry in the manner and in the form generally required for the “Recording of Aircraft Titles and Security Documents” pursuant to 14 CFR [Part] 49.

(2) Is valid upon recordation by the FAA aircraft registry of a written document entitled “NOTICE OF AIRCRAFT LIEN.” This document shall:

(a) Be signed by the repairperson or by a duly authorized agent or attorney of the repairperson; and

(b) Be verified by the person signing the notice of lien upon that person’s personal knowledge of the matters stated in the notice of lien, and which shall affirmatively state: “I declare under penalty of perjury, in accordance with the laws of the state of Idaho and of the laws of the United States of America, that the matters stated herein are true and correct upon my information and belief.”

(c) Contain the date and place of signing of the notice of lien.

(3) The notice of lien referred to in subsection (2) of this section shall contain the following information:

(a) The United States registration number, make, model and serial number of the aircraft subject to the lien;

(b) The name of the manufacturer, the model, and the serial number of all applicable engines, propellers or appliances subject to the lien, to the extent they are not otherwise identifiable merely by reference to the aircraft registration number;

(c) The name, address and business telephone number of the repairperson asserting the lien;

(d) The name, address and business telephone number of the registered owner of the civil aircraft or other property subject to the lien;

(e) The name, address and business telephone number of the person consenting to the performance of the work giving rise to the lien;

- (f) The amount of the lien, exclusive of prospective storage costs;
- (g) A narrative statement describing the nature of the work accomplished;
- (h) The affirmative statement that a copy of the notice of lien is concurrently being sent by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to both the registered owner and to the person consenting to the work;
- (i) The date of last services or materials provided.

(4) No notice of lien pursuant to subsection (2) of this section is valid unless it is presented for recording at the FAA registry within one hundred eighty (180) days of the completion of the work giving rise to the lien.

### **History.**

I.C., § 45-1103, as added by 2002, ch. 371, § 1, p. 1041.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 45-1103, which comprised R.S., § 3386; am. 1890-1891, p. 181, § 1; reen. 1899, p. 121, § 1; reen. R.C. & C.L., § 3408; C.S., § 6375; am. 1929, ch. 250, § 1, p. 508; I.C.A., § 44-1003; am. 1935, ch. 85, § 1, p. 149; am 145, ch. 11, § 1, p. 14, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.

### **Compiler's Notes.**

The bracketed insertion near the end of subsection (1) was added by the compiler to clarify the federal reference.

For further information about the FAA aircraft registry, referred to in subsection (4), see <https://registry.faa.gov/aircraftinquiry>.

**§ 45-1104. Persons considered owner of aircraft or related equipment, or authorized agent of owner.** — The following persons are considered the owner of an aircraft or related equipment, or the authorized agent of the owner, for the purposes of this chapter:

(1) A person in possession of the aircraft or related equipment under an agreement to purchase it, whether title to the aircraft or related equipment is in the possession of the person or the vendor; (2) A person in lawful possession of the aircraft or related equipment.

**History.**

I.C., § 45-1104, as added by 2002, ch. 371, § 1, p. 1041.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1104, which comprised C.S., § 6375(a), as added by 1929, ch. 250, § 2, p. 508; I.C.A., § 44-1044, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.

**§ 45-1105. Priority.** — A lien under [section 45-1102, Idaho Code](#), when recorded in accordance with [section 45-1103, Idaho Code](#), is superior to and preferred to:

(1) A lien, mortgage or encumbrance that attaches to the aircraft, or related equipment, after recording of the notice of lien under [section 45-1103, Idaho Code](#).

(2) A prior lien, mortgage or other encumbrance, when the person furnishing the materials or performing the services did not have actual or constructive notice of the prior lien, mortgage or encumbrance, or the prior lien, mortgage or encumbrance was not recorded or filed in the manner provided by law.

(3) A lien that attaches to the aircraft or equipment on the basis of a security interest, if, prior to the expenditure of labor, skill or materials upon the aircraft or equipment, the person planning to make the expenditure gives notice of that intention by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to any holder of a security interest of record at the FAA prior to commencing such expenditure by sending such notice to the address of the holder of the security interest listed in the FAA record of lien, and the holder of the security interest does not respond within three (3) days of receipt of notice noting its opposition to the making of such an expenditure of labor, skill or materials.

**History.**

[I.C., § 45-1105](#), as added by 2002, ch. 371, § 1, p. 1041.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1105, which comprised C.S., § 6375(b), as added by 1929, ch. 250, § 3, p. 508; I.C.A., § 44-1005, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.

**Compiler's Notes.**

For further information about the FAA aircraft registry, referred to in subsection (3), see *<https://registry.faa.gov/aircraftinquiry>*.

**§ 45-1106. Enforcement of lien.** — (1) A suit to enforce a lien described in [section 45-1102, Idaho Code](#), must be brought within twelve (12) months after the lien is recorded.

(2) The practice and procedure to enforce a lien shall be governed by the law applicable to the foreclosure of mechanics' and materialmen's liens provided however, that notice requirements shall also extend to secured parties or lienholders of record with the federal aviation administration.

(3) Any judgment entered by the court shall be deemed to be a "conveyance" within the meaning of [subsection \(a\)\(19\) of 49 U.S.C. section 40102](#), and shall be recordable at the FAA aircraft registry pursuant to [14 CFR 49.17](#).

### **History.**

[I.C., § 45-1106](#), as added by 2002, ch. 371, § 1, p. 1041.

## **STATUTORY NOTES**

### **Cross References.**

Mechanic's and materialmen's liens, § 45-501 et seq.

### **Prior Laws.**

Former § 45-1106, which comprised R.S., § 3387; am. 1890, 1891, p. 181, § 2; reen. 1899, p. 121, § 2; reen. R.C. & C.L., § 3409; C.S., § 3676; am. 1921, ch. 137, § 1, p. 323; am. 1929, ch. 250, § 4, p. 508; I.C.A., § 44-1006; am. 1951, ch. 251, § 3, p. 540; am. 1959, ch. 72, § 3, p. 157, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.

### **Compiler's Notes.**

For further information about the FAA aircraft registry, referred to in subsection (3), see <https://registry.faa.gov/aircraftinquiry>.

**§ 45-1107. Release or discharge of lien.** — A lien under this chapter shall be released and discharged by the lien claimant or the agent of the lien claimant in accordance with the regulations of the federal aviation administration.

**History.**

I.C., § 45-1107, as added by 2002, ch. 371, § 1, p. 1041.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1107, which comprised 1885, p. 74, § 4; R.S., § 3388; reen. R.C. & C.L., § 3410; C.S., § 6377; am. 1929, ch. 250, § 5, p. 508; I.C.A., § 44-1107, was repealed by S.L. 1967, ch. 161, § 10-102, effective midnight, December 31, 1967.





## Chapter 12

### RECONVEYANCE

Sec.

45-1201. Definitions.

45-1202. Conditions to reconveyance.

45-1203. Procedure for reconveyance.

45-1204. Objections to reconveyances.

45-1205. Liability of title insurance agent or underwriter.

45-1206. Payoffs prior to effective date.

**§ 45-1201. Definitions.** — As used in this chapter:

(1) “Beneficiary” means both the record owner of the beneficiary’s interest under a trust deed, including successors in interest.

(2) “Reconveyance” or “reconvey” means a reconveyance of a trust deed.

(3) “Satisfactory evidence” of the full payment of an obligation secured by a trust deed means a payoff letter, the original cancelled check or a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed.

(4) “Servicer” means a person or entity that collects loan payments on behalf of a beneficiary.

(5) “Title agent” means a title insurance agent duly licensed as an organization under chapter 27, title 41, Idaho Code.

(6) “Title insurer” means a title insurer duly authorized to conduct business in the state of Idaho under title 41, Idaho Code.

(7) “Trust deed” means a trust deed as defined in [section 45-1502, Idaho Code](#).

**History.**

[I.C., § 45-1201](#), as added by 1995, ch. 326, § 1, p. 1092.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 45-1201 to 45-1205, which comprised S.L. 1933, ch. 74, §§ 1 to . 124, were repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

**§ 45-1202. Conditions to reconveyance.** — A title insurer or title agent may reconvey a trust deed pursuant to the procedure prescribed in [section 45-1203, Idaho Code](#), if the obligation secured by the trust deed shall have been fully paid by the title insurer or title agent that is permitted to reconvey the trust deed pursuant to [section 45-1203, Idaho Code](#), or such title insurer or title agent shall possess satisfactory evidence of such payment in full. A title insurer or title agent may provide a reconveyance under [section 45-1203, Idaho Code](#), whether or not it is then named as trustee under a trust deed.

**History.**

[I.C., § 45-1202](#), as added by 1995, ch. 326, § 1, p. 1092.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1202 was repealed. See Prior Laws, § 45-1201.

**CASE NOTES**

**Satisfaction of Obligation.**

Only after the obligation secured by a deed of trust is satisfied is the deed reconveyed to the grantor. [Defendant A v. Idaho State Bar, 132 Idaho 662, 978 P.2d 222 \(1999\)](#).

**§ 45-1203. Procedure for reconveyance.** — A title insurer or title agent may execute and record a reconveyance of a trust deed upon compliance with the following procedure:

(1) Not less than thirty (30) days after payment in full of the obligation secured by the trust deed and receipt of satisfactory evidence of payment in full has been effected, the title insurer or title agent may either: (a) mail a notice by certified mail with postage prepaid, return receipt requested, to the beneficiary or a servicer at its address set forth in the trust deed, and at any address for the beneficiary or servicer specified in the last recorded assignment of the trust deed, if any, and at any address for a beneficiary or servicer shown in any request for notice duly recorded pursuant to [section 45-1511, Idaho Code](#); or (b) hand deliver a notice to the beneficiary or servicer. The notice shall be in substantially the following form and shall be accompanied by a copy of the reconveyance to be recorded: NOTICE OF INTENT

TO RELEASE OR RECONVEY

TO: [Beneficiary] or [Servicer for Beneficiary]

FROM: [Title insurer or Title agent]

DATE: .....

Notice is hereby given to you as follows: 1. This notice concerns the trust deed described as follows: Trustor: .....

Beneficiary: .....

Recording information: Entry No.: .....

Book No.: .....

Page No.: .....

2. The undersigned claims to have fully paid or received satisfactory evidence of the payment in full of the obligation secured by the trust deed described above.

3. Unless, within sixty (60) days following the date stated above, the undersigned has received by certified mail, return receipt requested, directed to the address noted below a notice stating that you have not

received payment in full of all obligations secured by the trust deed or that you otherwise object to reconveyance of the trust deed, the undersigned will fully release and reconvey the trust deed pursuant to chapter 12, title 45, Idaho Code.

4. A copy of the reconveyance or release of the trust deed is enclosed with this notice.

[Title insurer/Title agent]

[Address]

(2) Sixty (60) days shall elapse following the mailing, in the case of certified mail, or delivery, in the case of hand delivery, of the notice prescribed in subsection (1) of this section.

(3) If the title insurer or title agent has not upon expiration of that sixty (60) day period received any objection under [section 45-1204, Idaho Code](#), the title insurer or title agent may then execute, acknowledge, and record a reconveyance of the trust deed in substantially the following form:  
RECONVEYANCE OF TRUST DEED

[To be used concerning trust deeds as defined  
in [section 45-1502, Idaho Code](#)]

....., a [Title insurer/Title agent] authorized to act in the State of Idaho does hereby, pursuant to chapter 27, title 41, Idaho Code, reconvey, without warranty, to the person or persons legally entitled thereto, the following trust property covered by a Trust Deed naming ....., as trustor, and ....., as beneficiary, which was recorded on ..... in Book ..... at Page ..... as Entry No. ....: The following described property located in ..... County, State of Idaho: [Property Description]

The undersigned title insurer/title agent hereby certifies as follows: 1. The undersigned title insurer/title agent has fully paid or received satisfactory evidence of the payment in full of the obligation secured by said Trust Deed.

2. Not less than thirty (30) days following the payment in full of said Trust Deed, the undersigned hand delivered or mailed by certified mail, return receipt requested, to the record beneficiary or a servicer for the

record beneficiary under said Trust Deed at its record address a notice as required in [section 45-1203\(1\), Idaho Code](#).

3. In excess of sixty (60) days elapsed after the mailing of said notice and no objection to said reconveyance has been received by the undersigned.

Dated .....

.....

[Title insurer/Title agent]

[acknowledgment]

(4) A reconveyance of a trust deed, when executed and acknowledged in substantially the form prescribed in subsection (3) of this section shall be entitled to recordation and, when recorded, shall constitute a reconveyance of the trust deed identified therein, irrespective of any deficiency in the reconveyance procedure not disclosed in the release or reconveyance that is recorded other than forgery of the title insurer or title agent's signature. The reconveyance of a trust deed pursuant to this chapter shall not itself discharge any personal obligation that was secured by the trust deed at the time of its reconveyance.

### **History.**

[I.C., § 45-1203](#), as added by 1995, ch. 326, § 1, p. 1092.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 45-1203 was repealed. See Prior Laws, § 45-1201.

### **Compiler's Notes.**

The words enclosed in brackets so appeared in the law as enacted.

## **CASE NOTES**

### **Satisfaction of Obligation.**

Only after the obligation secured by a deed of trust is satisfied is the deed reconveyed to the grantor. [Defendant A v. Idaho State Bar, 132 Idaho 662](#),

978 P.2d 222 (1999).

**Cited** Eagle Equity Fund, LLC v. Titleone Corp., 161 Idaho 355, 386 P.3d 496 (2016).

**§ 45-1204. Objections to reconveyances.** — The title insurer or title agent shall not record a reconveyance of a trust deed if, prior to the expiration of the sixty (60) day period specified in [section 45-1203\(2\), Idaho Code](#), the title insurer or title agent receives a notice on behalf of the beneficiary or servicer stating that the trust deed continues to secure an obligation or otherwise objecting to reconveyance of the trust deed.

**History.**

[I.C., § 45-1204](#), as added by 1995, ch. 326, § 1, p. 1092.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1204 was repealed. See Prior Laws, § 45-1201.

**CASE NOTES**

**Cited** [Eagle Equity Fund, LLC v. Titleone Corp., 161 Idaho 355, 386 P.3d 496 \(2016\).](#)



**§ 45-1205. Liability of title insurance agent or underwriter.** — In the event that a trust deed is reconveyed by a title insurer or title agent purporting to act under the provisions of this chapter, but the obligation secured by the trust deed has not been fully paid, the title insurer or title agent effecting such reconveyance shall be liable to the beneficiary of the trust deed for the damages suffered as a result of such improper reconveyance only if the title insurer or title agent failed to substantially comply with the provisions of section 45-1203 or 45-1204, Idaho Code, or acted with negligence or in bad faith in reconveying the trust deed.

**History.**

I.C., § 45-1205, as added by 1995, ch. 326, § 1, p. 1092.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1205 was repealed. See Prior Laws, § 45-1201.

**CASE NOTES**

**Damages.**

In a case arising out of an allegedly improper reconveyance of a junior deed of trust held by appellant, the district court did not err in finding that appellant failed to provide competent evidence of damages on summary judgment. At best, appellant provided speculation and conjecture on the issue, which was not sufficient to support a damages award. *Eagle Equity Fund, LLC v. Titleone Corp.*, 161 Idaho 355, 386 P.3d 496 (2016).

**§ 45-1206. Payoffs prior to effective date.** — The reconveyance procedure prescribed in sections 45-1201 through 45-1205, Idaho Code, shall apply to obligations secured by trust deeds that were paid either prior to or following the effective date of this section.

**History.**

I.C., § 45-1206, as added by 1995, ch. 326, § 1, p. 1092.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this section” refers to the effective date of S.L. 1995, ch. 326, § 1, which was effective July 1, 1995.



Chapter 13  
GENERAL PROVISIONS RELATING TO ENFORCEMENT OF  
LIENS AND MORTGAGES

Sec.

45-1301. Foreclosure of chattel mortgages — Procedure. [Repealed.]

45-1302. Determination of all rights upon foreclosure proceedings.

45-1303. Validation of former proceedings to quiet title.

**§ 45-1301. Foreclosure of chattel mortgages — Procedure.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1929, ch. 179, § 1, p. 317; I.C.A., § 44-1101, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967. For present comparable law, see § 28-9-601.

**§ 45-1302. Determination of all rights upon foreclosure proceedings.**

— In any suit brought to foreclose a mortgage or lien upon real property or a lien on or security interest in personal property, the plaintiff, cross-complainant or plaintiff in intervention may make as party defendant in the same cause of action, any person having, claiming or appearing to have or to claim any title, estate, or interest in or to any part of the real or personal property involved therein, and the court shall, in addition to granting relief in the foreclosure action, determine the title, estate or interest of all parties thereto in the same manner and to the same extent and effect as in the action to quiet title.

**History.**

1929, ch. 113, § 1, p. 182; I.C.A., § 44-1104; am. 1937, ch. 21, § 1, p. 32; am. 1967, ch. 272, § 21, p. 745; am. 2010, ch. 79, § 16, p. 133.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 79, deleted “including parties mentioned in section 5-325” following “any person.”

**Effective Dates.**

Section 32 of S.L. 1967, ch. 272 provided that this act become effective at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code. Section 33 provided that instruments executed before such date could be enforced as if the amendment had not occurred.

**CASE NOTES**

Determination.

Mandatory party.

Notice.

Determination.

Upon foreclosure of a mortgage against real estate subject to other liens, the trial court had jurisdiction to order the application of funds remaining after payment of the judgment of the mortgage holder to the satisfaction of such junior liens. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

### **Mandatory Party.**

The purchaser at an execution sale, who acquired the property after the materialman's lien arose but before foreclosure on the lien, must be named as a party in a foreclosure action by the holder of a materialman's lien to make the foreclosure action and subsequent foreclosure sale binding on that owner. *Bonner Bldg. Supply, Inc. v. Standard Forest Prods., Inc.*, 106 Idaho 682, 682 P.2d 635 (Ct. App. 1984).

### **Notice.**

This section does not enable a materialman to foreclose a lien as against other interested parties without giving them notice of the proceedings. *Bonner Bldg. Supply, Inc. v. Standard Forest Prods., Inc.*, 106 Idaho 682, 682 P.2d 635 (Ct. App. 1984).

**§ 45-1303. Validation of former proceedings to quiet title.** — All proceedings heretofore taken in any suit for the foreclosure of a mortgage or lien upon real property, and all judgments and decrees made, filed and docketed under such proceedings, and wherein the plaintiff, cross-complainant or plaintiff in intervention has quieted the title in such action or proceeding in conformity to the intent of section 45-1302[, Idaho Code], are hereby validated.

**History.**

1929, ch. 113, § 2, p. 182; I.C.A., § 44-1105.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 3 of S.L. 1929, ch. 113 declared an emergency. Approved March 5, 1929.





## Chapter 14

### PLEDGES

Sec.

45-1401 — 45-1420. [Repealed.]

**§ 45-1401 — 45-1420. Pledges — Procedure. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised R.S., §§ 3410 to 3429; reen. R.C. & C.L., §§ 3421 to 3440; C.S., §§ 6388 to 6407; I.C.A., §§ 44-1201 to 44-1220; am. 1945, ch. 72, § 1, p. 95, were repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967. For present comparable law, see chapter 9, title 28, Idaho Code.



## Chapter 15

### TRUST DEEDS

Sec.

45-1501. Declaration of policy. [Repealed.]

45-1502. Definitions — Trustee's charge.

45-1503. Transfers in trust to secure obligation — Foreclosure.

45-1504. Trustee of trust deed — Who may serve — Successors.

45-1505. Foreclosure of trust deed, when.

45-1506. Manner of foreclosure — Notice — Sale.

45-1506A. Rescheduled sale — Original sale barred by stay — Notice of rescheduled sale.

45-1506B. Postponement of sale — Intervention of stay.

45-1506C. Supplemental notice — Opportunity to request loan modification.

45-1507. Proceeds of sale — Disposition.

45-1508. Finality of sale.

45-1509. Trustee's deed — Form and contents.

45-1510. Trustee's deed — Recording — Effect.

45-1511. Request for copy of notice of default or notice of sale — Marginal recordation thereof.

45-1512. Money judgment — Action seeking balance due on obligation.

45-1513. Transfers and trusts are conveyances.

45-1514. Reconveyance upon satisfaction of obligation.

45-1515. Time limits for foreclosure.

**§ 45-1501. Declaration of policy. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1957, ch. 181, § 1, p. 345, was repealed by S.L. 1967, ch. 118, § 1.

**§ 45-1502. Definitions — Trustee's charge.** — As used in this act:

(1) “Beneficiary” means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) “Grantor” means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) “Trust deed” means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) “Trustee” means a person to whom title to real property is conveyed by trust deed, or his successor in interest for the limited purpose of the power of sale contained in this chapter upon the occurrence of certain contingencies set forth in such trust deed, and the obligation to reconvey the deed of trust pursuant to [section 45-1514, Idaho Code](#). All other incidents of ownership of such real property shall remain with the grantor. For the purpose of [section 45-1506\(2\)\(c\), Idaho Code](#), a trustee is not a party requiring notice of sale.

(5) “Real property” means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to: (a) any real property located within an incorporated city or village at the time of the transfer; (b) any real property not exceeding eighty (80) acres, regardless of its location, provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods; or (c) any real property not exceeding forty (40) acres regardless of its use or location.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise

restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

### **History.**

1957, ch. 181, § 2, p. 345; am. 1967, ch. 118, § 2, p. 251; am. 1970, ch. 42, § 1, p. 89; am. 1983, ch. 190, § 1, p. 514; am. 1995, ch. 326, § 2, p. 1092; am. 1996, ch. 248, § 1, p. 783; am. 1997, ch. 387, § 1, p. 1242; am. 2008, ch. 365, § 1, p. 1000; am. 2016, ch. 227, § 1, p. 624.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 365, in subsection (5)(b), substituted “eighty (80) acres” for “forty (40) acres,” and substituted “provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods” for “and in either event where the trust deed states that the real property involved is within either of the above provisions, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make such transfer and trust and power of sale conferred in this act”; and added subsection (5)(c).

The 2016 amendment, by ch. 227, rewrote subsection (4), which formerly read: “‘Trustee’ means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest”.

### **Compiler's Notes.**

The term “this act” in the introductory paragraph and in subsection (3) refers to S.L. 1957, Chapter 181, which is compiled as §§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.



The term “this act” in subsection (5) refers to S.L. 1967, Chapter 118, which is compiled as §§ 45-1502 and 45-1503.

Probably, both references should be to “this chapter,” being chapter 15, title 45, Idaho Code.

### **Effective Dates.**

Section 2 of S.L. 1997, ch. 387 declared an emergency. Approved March 24, 1997.

## **CASE NOTES**

[Lien foreclosure.](#)

[Mobile homes.](#)

[Required statement.](#)

[Title search update.](#)

[Trust deed.](#)

### **Lien Foreclosure.**

Although previously held valid as to the beneficiary of the deed of trust, a mechanic’s lien was not valid as to a trustee’s sale buyer because the builder did not name the trustee of the deed of trust within the six-month period required by § 45-510 to give effect to a mechanic’s lien against subsequent holders of legal title. Under this section, the trustee was the holder of legal title. [Parkwest Homes, LLC v. Barnson, 154 Idaho 678, 302 P.3d 18 \(2013\).](#)

### **Mobile Homes.**

Mobile home was affixed to the land at the time of a nonjudicial foreclosure sale and was, therefore, real property. As real property, the mobile home was subject to a deed of trust and properly transferred to the trustee at the sale pursuant to § 45-1503 and this section [Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 \(2009\).](#)

### **Required Statement.**

Under Idaho law a trust deed, which conveyed property exceeding 20 acres [now 80 acres] and did not contain the “statement” required by subdivision (5) of this section, would be treated as a mortgage, the creditor

losing only the right to nonjudicial foreclosure and the shorter 120-day period of cure as opposed to one year post-foreclosure period of redemption. Because the trust deed would be recognized as a mortgage by Idaho law, its recordation is constructive notice of the beneficiary's lien, which would protect its rights as against subsequent purchasers or encumbrancers. *Bear Lake W., Inc. v. Stock*, 36 Bankr. 413 (Bankr. D. Idaho 1984) (See 2008 amendment).

If a trust deed recites that the property described complies with the acreage requirement of this section, such statement is conclusive with respect to compliance with the statute. Even had the deed of trust not recited that the property conveyed the requisite acreage, that defect would not render the instrument ineffective to create a lien. While the beneficiary would likely lose the right to foreclose the deed of trust by private sale, the instrument would be treated as a mortgage subject to judicial foreclosure. *Hymas v. Am. Gen. Fin., Inc. (In re Blair)*, 2000 Bankr. LEXIS 2115 (Bankr. D. Idaho May 18, 2000) (See 2008 amendment).

### **Title Search Update.**

Neither the deed of trust under which the defendant title insurance company was trustee, nor this chapter, established a duty on the part of the defendant to provide updates on title searches made prior to transfer, and the verbal update was not given pursuant to the insurer's role as trustee; thus, any cause of action based upon negligence against the title insurer because of inaccuracy of the update was barred. *Brown's Tie & Lumber Co. v. Chicago Title Co.*, 115 Idaho 56, 764 P.2d 423 (1988).

### **Trust Deed.**

A deed of trust conveys to the trustee nothing more than a power of sale, capable of exercise upon the occurrence of certain contingencies (such as default in payment) and leaves in the trustor a legal estate comprised of all incidents of ownership which passes to the bankruptcy estate upon the filing of bankruptcy. *Long v. Williams*, 105 Idaho 585, 671 P.2d 1048 (1983).

Even though title passes for the purpose of the trust, a deed of trust is for practical purposes only a mortgage with power of sale. *Long v. Williams*, 105 Idaho 585, 671 P.2d 1048 (1983).

Although for practical purposes a deed of trust is only a mortgage with power of sale, title to the real estate does pass for the purpose of the trust, and legal title to the property is conveyed by the deed of trust to the trustee. *Defendant A v. Idaho State Bar*, 132 Idaho 662, 978 P.2d 222 (1999).

Where the chain of assignments concerning the deed of trust was apparently corrupted when an alleged beneficiary made a transfer when it held no interest in the deed of trust, debtors' adversary complaint to nullify the deed of trust under § 45-1505 and this section could proceed to trial. *Rinehart v. Fed. Nat'l Mortg. Assocs. (In re Rinehart)*, 2012 Bankr. LEXIS 3414 (Bankr. D. Idaho July 24, 2012).

A deed of trust conveys real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary. When a deed of trust is executed and delivered, the legal title of the property passes to the trustee. *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 365 P.3d 1033 (2016).

**Cited** *Ellis v. Butterfield*, 98 Idaho 644, 570 P.2d 1334 (1977); *Old Stone Capital Corp. v. John Hoene Implement Corp.*, 647 F. Supp. 916 (D. Idaho 1986); *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989); *Edwards v. Mortgage Elec. Registration Sys.*, 154 Idaho 511, 300 P.3d 43 (2013).

**§ 45-1503. Transfers in trust to secure obligation — Foreclosure. —**

(1) Transfers in trust of any estate in real property as defined in [section 45-1502\(5\), Idaho Code](#), may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor or his successor in interest to enforce an obligation owed by the grantor or his successor in interest unless:

(a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to [section 45-1512, Idaho Code](#); or (b) The action is one for foreclosure as provided by law for the foreclosure of mortgages on real property; or (c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action against the grantor or his successor in interest to enforce the obligation owed by grantor or his successor in interest without first resorting to the security; or (d) The action is one excluded from the meaning of "action" under the provisions of [section 6-101\(3\), Idaho Code](#).

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the

property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. If the court finds that the property is not substantially valueless, the beneficiary may seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed.

### **History.**

1957, ch. 181, § 3, p. 345; am. 1967, ch. 118, § 3, p. 251; am. 1989, ch. 340, § 1, p. 861; am. 1993, ch. 281, § 2, p. 949.

## **STATUTORY NOTES**

### **Cross References.**

Foreclosure of mortgages, § 6-101 et seq.

### **Compiler's Notes.**

The term "this act" in the second sentence in the introductory paragraph in subsection (1) refers to S.L. 1957, Chapter 181, which is compiled as §§

45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.

### **Effective Dates.**

Section 4 of S.L. 1967, ch. 118 declared an emergency. Approved March 15, 1967.

Section 2 of S.L. 1989, ch. 340 declared an emergency. Approved April 5, 1989.

## **CASE NOTES**

[Amendment of 1989.](#)

[Bankruptcy.](#)

[Foreclosures.](#)

[Mobile homes.](#)

[Remedies.](#)

[Substantially valueless security.](#)

### **Amendment of 1989.**

The thrust of the legislative intent with regard to the 1989 amendment of this section is that where the obligation secured by a deed of trust is breached, the beneficiary may not institute a judicial action unless specific conditions are met, and this language hardly lends itself to the argument that the legislature meant for this section as amended to have retroactive effect upon existing actions. [Frazier v. Neilsen & Co., 118 Idaho 104, 794 P.2d 1160 \(Ct. App. 1990\).](#)

Proceedings initiated before April 5, 1989, the effective date of the 1989 amendment to this section, will be subject to the law as announced in [Frazier v. Neilsen & Co., 115 Idaho 739, 769 P.2d 1111 \(1989\)](#), while proceedings initiated upon or after April 5, 1989 will be subject to this section as amended. [Frazier v. Neilsen & Co., 118 Idaho 104, 794 P.2d 1160 \(Ct. App. 1990\).](#)

The 1989 amendments to this section did not apply to a promissory note which was executed prior to the 1989 amendments. [Curtis v. Firth, 123](#)

Idaho 598, 850 P.2d 749 (1993).

### **Bankruptcy.**

A deed of trust conveys to the trustee nothing more than a power of sale, capable of exercise upon the occurrence of certain contingencies (such as default in payment) and leaves in the trustor a legal estate comprised of all incidents of ownership which passes to the bankruptcy estate upon the filing of bankruptcy. *Long v. Williams*, 105 Idaho 585, 671 P.2d 1048 (1983).

### **Foreclosures.**

In 1957, §§ 45-901 and 45-904 were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to §§ 6-101 and 6-104 which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed by advertisement or notice and sale. *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

Where beneficiaries of deed of trust opted for judicial foreclosure, rather than foreclosure by advertisement and sale, the court properly determined the amount of the deficiency judgment by proceeding under § 6-108, rather than under § 45-1512. *Thompson v. Kirsch*, 106 Idaho 177, 677 P.2d 490 (Ct. App. 1984) (See 1989 amendment).

### **Mobile Homes.**

Mobile home was affixed to the land at the time of a non-judicial foreclosure sale and was, therefore, real property. As real property, the mobile home was subject to a deed of trust and properly transferred to the trustee at the sale pursuant to § 45-1502 and this section *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009).

### **Remedies.**

This section is not to be interpreted as providing only two remedies, the exercise of power of sale and foreclosure, upon default where the obligation is secured by a deed of trust; if the statute was intended to provide exclusive remedies, it would have used mandatory “shall” language, rather than the permissive “may.” *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

### **Substantially Valueless Security.**

No action can be maintained for the recovery on a promissory note secured by a deed of trust, unless the action is coupled with an action to foreclose the deed of trust, except where it is shown that the security has become substantially valueless. *First Interstate Bank v. Eisenbarth*, 123 Idaho 895, 853 P.2d 640 (Ct. App. 1993).

Bank was entitled to proceed directly against debtors where its interest in the property was rendered substantially valueless as defined in subsection (2) of this section. *First Interstate Bank v. Eisenbarth*, 123 Idaho 895, 853 P.2d 640 (Ct. App. 1993).

When a bank foreclosed on a mortgage on a cottage on land leased from the Idaho department of lands, the bank's deficiency claim was barred because (1) the cottage was real property, (2) the lease was not substantially valueless, (3) the bank had to first foreclose on the mortgage, (4) the claim was not asserted within three months of foreclosing, and (5) the claim did not relate back to original or first amended complaints, under which the claim would have been timely. *Idaho First Bank v. Bridges*, 164 Idaho 178, 426 P.3d 1278 (2018).

**Cited** *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).



**§ 45-1504. Trustee of trust deed — Who may serve — Successors. —**

(1) The trustee of a trust deed under this act shall be:

(a) Any member of the Idaho state bar; (b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States; (c) An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or (d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

**History.**

1957, ch. 181, § 4, p. 345; am. 1969, ch. 155, § 1, p. 482; am. 1983, ch. 190, § 2, p. 514; am. 2005, ch. 236, § 3, p. 717.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the introductory paragraph in subsection (1) refers to S.L. 1957, Chapter 181, which is compiled as §§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.

**Effective Dates.**

Section 2 of S.L. 1969, ch. 155 declared an emergency. Approved March 14, 1969.

## **CASE NOTES**

### **Successor Trustee.**

Deed of trust beneficiary's appointment of a trustee the day before the deed of trust was assigned to it was valid; under subsection (2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment. [Russell v. Onewest Bank FSB, 2011 U.S. Dist. LEXIS 121836 \(D. Idaho Oct. 20, 2011\).](#)

**Cited** [Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 \(1993\); Edwards v. Mortgage Elec. Registration Sys., 154 Idaho 511, 300 P.3d 43 \(2013\).](#)

**§ 45-1505. Foreclosure of trust deed, when.** — The trustee may foreclose a trust deed by advertisement and sale under this act if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated; and (2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and (3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in [section 45-1511, Idaho Code](#). Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of paper, no smaller than eight and one-half (8 ½) inches by eleven (11) inches: “NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower’s interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can “save” your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to

“rescue” you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option.”.

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

### **History.**

1957, ch. 181, § 5, p. 345; am. 1990, ch. 401, § 1, p. 1122; am. 2008, ch. 192, § 2, p. 603; am. 2009, ch. 136, § 1, p. 417.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Amendments.**

The 2008 amendment, by ch. 192, in subsection (3), added the third and fourth sentences, the notice, and the last paragraph.

The 2009 amendment, by ch. 136, in subsection (3), deleted “canary yellow or some similarly colored yellow” following “on a separate sheet of” just prior to the notice.

### **Legislative Intent.**

Section 5 of S.L. 1990, ch. 401 read: “The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law: “a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#); “b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#); “c. The changes reflected in Section 4 [§ 45-1510] of this act; and “d. Various mere semantical changes and corrections of obvious grammatical and typographical errors.”

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1957, Chapter 181, which is compiled as §§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.

## **CASE NOTES**

[Assignments.](#)

[Construction.](#)

[Delay of foreclosure sale.](#)

[Foreclosure sale void.](#)

[No prerequisites.](#)

[Notice of trustee’s sale.](#)

[Procedure.](#)

[Prohibition of foreclosure.](#)

[Suit to recover debt.](#)

— [Dismissal.](#)

— [Exhausting security.](#)

— [Prohibition of foreclosure.](#)

— [Waiver of security.](#)

[Assignments.](#)

When lender transferred its interest in a promissory note, it also transferred its interest in the deed of trust. However, as there was no change in the name of the nominee (the named beneficiary in the deed of trust), no assignment of the deed of trust was necessary or recordable. The beneficiary/trustee may foreclose on the deed of trust under this section. *Renshaw v. Mortg. Elec. Registration Sys.*, 155 Idaho 656, 315 P.3d 844 (2013).

### **Construction.**

This section and § 45-1512 are in pari materia and must be construed together. *Frontier Federal Sav. & Loan Ass'n v. Douglass*, 123 Idaho 808, 853 P.2d 553, cert. denied, 510 U.S. 917, 114 S. Ct. 309, 126 L. Ed. 2d 257 (1993).

Where the chain of assignments concerning the deed of trust was apparently corrupted when an alleged beneficiary made a transfer when it held no interest in the deed of trust, debtors' adversary complaint to nullify the deed of trust under § 45-1502 and this section could proceed to trial. *Rinehart v. Fed. Nat'l Mortg. Assocs. (In re Rinehart)*, 2012 Bankr. LEXIS 3414 (Bankr. D. Idaho July 24, 2012).

### **Delay of Foreclosure Sale.**

Where a deed of trust, which was drafted by counsel for plaintiff, specifically granted defendant trustee the power to delay the foreclosure sale and recognized its statutorily imposed notice obligations as trustee, the action of the defendant, in delaying the scheduled foreclosure sale after discovering a previously unknown trust deed, was necessary to clear that trust deed from title at the judicial sale and, therefore, was a proper exercise of its powers as trustee and could not form the basis for an insurer's bad faith claim. *Brown's Tie & Lumber Co. v. Chicago Title Co.*, 115 Idaho 56, 764 P.2d 423 (1988).

### **Foreclosure Sale Void.**

Summary judgment in favor of the foreclosure sale purchaser should not have been granted, given case law holding that a sale is void under subsection (2) when there was no default at the time of the foreclosure sale; there was evidence in the record that there had been no default. *Fannie Mae v. Hafer*, 158 Idaho 694, 351 P.3d 622 (2015).

## **No Prerequisites.**

Pursuant to this section, a trustee may initiate nonjudicial foreclosure proceedings on a deed of trust without first proving ownership of the underlying note or demonstrating that the deed of trust beneficiary has requested or authorized the trustee to initiate those proceedings. Trustee is not required to prove it has standing before foreclosing on a deed of trust. *Trotter v. Bank of N.Y. Mellon*, 152 Idaho 842, 275 P.3d 857 (2012); *Purdy v. Bank of Am.*, 2012 U.S. Dist. LEXIS 140935 (D. Idaho Sept. 26, 2012).

## **Notice of Trustee's Sale.**

A beneficiary was not precluded from recovering a statutory deficiency judgment allowed by § 45-1512 by waiver or estoppel because the notice of trustee's sale stated that "the beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation." *Frontier Federal Sav. & Loan Ass'n v. Douglass*, 123 Idaho 808, 853 P.2d 553, cert. denied, 510 U.S. 917, 114 S. Ct. 309, 126 L. Ed. 2d 257 (1993).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the deed of trust was recorded, the debtors were in default, a notice of default stating the debtors' breach was recorded, and the debtors were properly served; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. *Thorian v. BARO Enters., LLC (In re Thorian)*, 387 B.R. 50 (Bankr. D. Idaho 2008).

## **Procedure.**

In 1957, §§ 45-901 and 45-904 were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to §§ 6-101 and 6-104 which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed by advertisement or notice and sale as authorized by chapter 181, such procedure being set out in § 45-1503, this section also requiring the recording of the trust deed and any assignment thereof and §

45-1506 requiring notice of trustee sale, setting up details of the complete procedure for sale. *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

### **Prohibition of Foreclosure.**

A trustee may foreclose a trust deed if there is a default by the grantor. Where the lender and the homeowners had resolved their default by agreement prior to the foreclosure sale, the foreclosure sale was not authorized by statute and was, therefore, void. *Fannie Mae v. Hafer*, 158 Idaho 694, 351 P.3d 622 (2015).

### **Suit to Recover Debt.**

#### **— Dismissal.**

Subdivision (4) provides that if the suit upon the debt is dismissed, foreclosure may again be made of the trust deed; if, during the suit on the debt, the property covered by the trust deed has been conveyed or encumbered by the debtor, any revival of the security of the trust deed upon dismissal of the suit on the debt as provided in subdivision (4) shall be subject to any such conveyance or encumbrance. *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

#### **— Exhausting Security.**

Holders of a promissory note secured by a deed of trust encumbering real property may sue for a money judgment on the note without first exhausting their security by judicial foreclosure or by exercise of the power of sale. *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

#### **— Prohibition of Foreclosure.**

Section prohibited holders of promissory note secured by a deed of trust from prevailing on their complaint which asked for judgment upon the debt and judgment to foreclose the deed of trust. Subsection (4) provides that the summary foreclosure procedure cannot be utilized if judicial process is being used to recover the debt; such language does not prohibit the collection of a debt without foreclosure of the trust deed, but does prohibit foreclosure if there is an action on the debt pending. *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

#### **— Waiver of Security.**



In subdivision (4) of this statute, the legislature contemplated a suit on debt independent of foreclosure provisions; if the creditor files suit to recover on the debt without first foreclosing on the security as provided by the statute, the security, as a matter of law, is waived at the time the action on the debt is filed. *Frazier v. Neilsen & Co.*, 115 Idaho 739, 769 P.2d 1111 (1989).

**Cited** *Security Pac. Fin. Corp. v. Bishop*, 109 Idaho 25, 704 P.2d 357 (Ct. App. 1985); *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 365 P.3d 1033 (2016).

**§ 45-1506. Manner of foreclosure — Notice — Sale.** — (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in [section 45-1511, Idaho Code](#).

(b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

(e) The sum owing on the obligation secured by the trust deed.

(f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.

(5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days, each of which attempts must be made at least thirty (30) days prior to the day of the sale, to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

(6) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment.

(7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

(8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in [section 45-1506A, Idaho Code](#), unless the sale is postponed as provided in this subsection or as provided in [section 45-1506B, Idaho Code](#), respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to [section 45-1506C\(1\), Idaho Code](#), the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

(9) The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

(11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

(12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of [section 45-1502, Idaho Code](#), and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

(13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.

(14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.

(15) On or after the tenth day, as provided in subsection (11) of this section, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may:

(a) Dispose of any titled personal property remaining on the premises in the manner described by applicable law; and

(b) Remove any nontitled personal property from the premises and place it in suitable storage. The purchaser may dispose of the nontitled personal property only after providing ninety (90) days' written notice as follows:

(i) First class mail to the last known address of the last known occupant of the property; and

(ii) Posting a notice in a conspicuous place on the premises that such nontitled personal property may be disposed of following such ninety (90) day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such nontitled personal property; and

(iii) The notice shall generally describe the nontitled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method of disposition.

(c) If the owner of the nontitled personal property fails to claim the nontitled personal property within ninety (90) days of the date that written notice was provided under paragraph (b) of this subsection, then any and all of his rights in said property shall extinguish, and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

### **History.**

1957, ch. 181, § 6, p. 345; am. 1967, ch. 74, § 1, p. 170; am. 1983, ch. 190, § 3, p. 514; am. 1990, ch. 401, § 2, p. 1122; am. 2011, ch. 323, § 1, p. 939; am. 2012, ch. 326, § 1, p. 905; am. 2016, ch. 364, § 1, p. 1071.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 323, added the last three sentences in subsection (8).

The 2012 amendment, by ch. 326, added the second sentence in subsection (6).

The 2016 amendment, by ch. 364, added subsection (15).

### **Legislative Intent.**

Section 5 of S.L. 1990, ch. 401 read: “The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

“a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#);

“b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#);

“c. The changes reflected in Section 4 [§ 45-1510] of this act; and

“d. Various mere semantical changes and corrections of obvious grammatical and typographical errors.”

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 4 of S.L. 2011, ch. 323 provided: “This act shall be in full force and effect on and after September 1, 2011.”

Section 2 of S.L. 2012, ch. 326 declared an emergency. Approved April 5, 2012.

## **CASE NOTES**

[Applicability.](#)

[Costs recoverable by beneficiary.](#)

[Curing default.](#)

[Excessive bid.](#)

[Injunction against foreclosure.](#)

[Postponement.](#)

[Procedure.](#)

Simultaneous foreclosure.

### **Applicability.**

The buyer protections afforded by § 45-1508 apply only to sales challenged for a failure to comply with the procedural provisions of this section; good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. Section 45-1508 does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. *Baker v. Nationstar Mortg., LLC (In re Baker)*, 574 B.R. 184 (Bankr. D. Idaho 2017).

### **Costs Recoverable by Beneficiary.**

Expenses of the trustee's sale, including a reasonable charge by the trustee and a reasonable attorney's fee incurred up to the time of sale, interest accrued from the date of sale to the date of judgment at the rate provided in the promissory note, and costs of the action for a deficiency and reasonable attorney fees incurred in the action were recoverable by the beneficiary in an action to obtain a deficiency judgment. *Farber v. Howell*, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986).

### **Curing Default.**

A tender of money to cure a default under subsection (12) of this section, which would usually be indispensable, is not required when its futility is shown; however, the fact that a bank manager had stated that he would have to check to see if a payment curing the default could be accepted was not enough, standing alone, to establish that an actual tender would have been futile. *Owens v. Idaho First Nat'l Bank*, 103 Idaho 465, 649 P.2d 1221 (Ct. App. 1982).

In order to constitute a valid tender of money, the law requires an actual, present, physical offer and a mere spoken offer to pay does not qualify as a valid tender; therefore, where an agent for property owners, whose property was to be sold after they defaulted on a note to a bank, only made an oral offer to cure the default in a phone conversation with the bank manager, the offer did not constitute a valid tender. *Owens v. Idaho First Nat'l Bank*, 103 Idaho 465, 649 P.2d 1221 (Ct. App. 1982).

Agreement between the parties did not merely provide that the sale would be postponed; it eliminated the default by altering the terms of the



promissory note so that there were no longer any sums past due. [Taylor v. Just](#), 138 Idaho 137, 59 P.3d 308 (2002).

### **Excessive Bid.**

Because the lender bid in excess of the amount of credit available to it under one of the deeds of trust, it did not pay the price owing before the trustee executed the trustee's deed as required by this section. However, it was unnecessary to set aside the sale, as the sale became final when the trustee accepted the lender's bid. [Spencer v. Jameson](#), 147 Idaho 497, 211 P.3d 106 (2009).

### **Injunction Against Foreclosure.**

If plaintiff had produced money and defendant had refused to accept the amount, an injunction to stay foreclosure would have been in order; however, where there was no evidence that there was an actual production or delivery of money coupled with plaintiff's offer to pay, an injunction against foreclosure was properly denied. Statement of defendant that the entire balance of the deed of trust was due was not sufficient to constitute a refusal, thus excusing plaintiff from making a valid tender in order to avoid foreclosure of deed of trust. [Allied Invs., Inc. v. Dunn](#), 104 Idaho 764, 663 P.2d 300 (1983).

### **Postponement.**

Any alleged error occurring at the postponement of a foreclosure was remedied through the later notices of, and the borrower's apparent acquiescence to, the postponement where she was properly informed. [Gordon v. United States Bank Nat'l Ass'n](#), — Idaho —, 455 P.3d 374 (2019).

### **Procedure.**

In 1957, §§ 45-901 and 45-904 were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to §§ 6-101 and 6-104 which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed. [Roos v. Belcher](#), 79 Idaho 473, 321 P.2d 210 (1958).

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to subsection (8) of this section; but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to § 45-1506A. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to § 45-1506B. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

Unlike sales postponed under § 45-1506A or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under § 45-1506B is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to § 45-1506B(3) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the notice of sale was published in the Idaho Statesman; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale, because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. *Thorian v. BARO Enters., LLC (In re Thorian)*, 387 B.R. 50 (Bankr. D. Idaho 2008).

This section requires that notice of the foreclosure sale be mailed to the personal representative of the estate of the deceased person who was entitled to notice. At the time the notice was mailed in this case, the owner was not the personal representative of the estate; the fact that she was appointed as personal representative eighteen months later did not retroactively validate the failure to comply with the section. *PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 200 P.3d 1180 (2009).

Where a mortgagor defaulted upon her mortgage loan repayment obligation, a trustee's sale was scheduled, the sale was postponed when the mortgagor agreed to make a partial payment in exchange for the postponement. The trustee verbally announced the time and place for the rescheduled sale, and the property was sold at the rescheduled sale. The buyer instituted an ejectment action to remove the mortgagor from the

property, and the mortgagor claimed that she was deprived of due process because she did not receive notice of the postponed sale date. The notice was sufficient because the trustee's announcement at the original sale date complied with subsection (8) of this section. While the mortgagor might have prevailed if she had persisted in her argument that the sale had been cancelled rather than postponed, her attorney failed to pursue this argument on appeal, and the court was not in a position to act upon a ground not presented on appeal. *Black Diamond Alliance, LLC v. Kimball*, 148 Idaho 798, 229 P.3d 1160 (2010).

Pursuant to § 45-1505, a trustee may initiate nonjudicial foreclosure proceedings on a deed of trust without first proving ownership of the underlying note or demonstrating that the deed of trust beneficiary has requested or authorized the trustee to initiate those proceedings. Trustee is not required to prove it has standing before foreclosing on a deed of trust. *Trotter v. Bank of N.Y. Mellon*, 152 Idaho 842, 275 P.3d 857 (2012); *Purdy v. Bank of Am.*, 2012 U.S. Dist. LEXIS 140935 (D. Idaho Sept. 26, 2012).

### **Simultaneous Foreclosure.**

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. *First Sec. Bank v. Stauffer*, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986).

**Cited** *Ellis v. Butterfield*, 98 Idaho 644, 570 P.2d 1334 (1977); *Security Pac. Fin. Corp. v. Bishop*, 109 Idaho 25, 704 P.2d 357 (Ct. App. 1985); *Young v. Washington Fed. Sav. & Loan Ass'n*, 156 Bankr. 282 (Bankr. D. Idaho 1993); *Frontier Federal Sav. & Loan Ass'n v. Douglass*, 123 Idaho 808, 853 P.2d 553 (1993); *Wilhelm v. Johnston*, 136 Idaho 145, 30 P.3d 300 (Ct. App. 2001).

## **RESEARCH REFERENCES**

**ALR.** — Action for damages for attempted wrongful foreclosure. 104 A.L.R.6th 485.

**§ 45-1506A. Rescheduled sale — Original sale barred by stay — Notice of rescheduled sale.** — (1) In the event a sale cannot be held at the time scheduled by reason of automatic stay provisions of the U.S. bankruptcy code ([11 U.S.C. 362](#)), or a stay order issued by any court of competent jurisdiction, then the sale may be rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided in this section.

(2) Notice of the rescheduled sale shall be given at least thirty (30) days before the day of the rescheduled sale by registered or certified mail to the last known address of all persons who were entitled to notice by mail of the original sale and to any person who shall have recorded a request for notice of sale at least forty-five (45) days prior to the rescheduled sale date in the form and manner required by [section 45-1511, Idaho Code](#), provided that recording the request prior to notice of default is, for the purposes of this section only, waived.

(3) Notice of the rescheduled sale shall be published in the newspaper of original publication once a week for three (3) successive weeks, making three (3) publishings in all, with the last publication to be at least ten (10) days prior to the day of sale.

(4) The trustee shall make an affidavit stating that he or she has complied with subsections (2) and (3) of this section. The trustee shall make the above affidavit available for inspection at the time of the rescheduled sale together with any affidavit of mailing and posting, when required, which was not of record as required by subsection (7) of [section 45-1506, Idaho Code](#), when the stay became effective. The affidavit or affidavits shall be attached to or incorporated in the trustee's deed.

### **History.**

[I.C., § 45-1506A](#), as added by 1983, ch. 190, § 4, p. 514; am. 1987, ch. 166, § 1, p. 326.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The reference enclosed in parentheses so appeared in the law as enacted.

## CASE NOTES

Effect of bankruptcy stay.

Failure to comply.

Procedure.

### **Effect of Bankruptcy Stay.**

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to § 45-1506(8); but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to this section. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to § 45-1506B. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

### **Failure to Comply.**

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of this section. The trustee's compliance with § 45-1506B was immaterial where the borrower had no notice of the first rescheduled sale date after a bankruptcy stay went into effect. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

### **Procedure.**

Unlike sales postponed under § 45-1506 or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under § 45-1506B is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to § 45-1506B(3) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

**Cited** *Young v. Washington Fed. Sav. & Loan Ass'n*, 156 Bankr. 282 (Bankr. D. Idaho 1993).

**§ 45-1506B. Postponement of sale — Intervention of stay.** — (1) If a stay as set out in subsection (1) of [section 45-1506A, Idaho Code](#), which would otherwise have stopped a foreclosure sale is terminated or lifted prior to the date of sale, then any person having a right to reinstate the deed of trust pursuant to subsection (12) of [section 45-1506, Idaho Code](#), may request the trustee to postpone the sale for a period of time which shall allow at least one hundred fifteen (115) days to elapse from the recording of the notice of default to the rescheduled date of sale exclusive of the period of time during which such stay was in effect.

(2) Written request for postponement must be served upon the trustee prior to the time set for the original sale.

(3) If the foreclosure has proceeded in compliance with all requirements of subsections (2) through and including (6), of [section 45-1506, Idaho Code](#), prior to the intervention of the stay, then at the time appointed for the original sale, the trustee shall announce the date and time of the rescheduled sale to be conducted at the place originally scheduled and no further or additional notice of any kind shall be required.

(4) If the foreclosure has proceeded in compliance with subsections (2) through and including (5), of [section 45-1506, Idaho Code](#), prior to the intervention of the stay, then the foreclosure process may be resumed if timely compliance can be had with publication of the original notice of sale under subsection (6) of [section 45-1506, Idaho Code](#). If timely compliance under subsection (6) of [section 45-1506, Idaho Code](#), is not possible, the partially completed foreclosure process shall be discontinued and any further sale proceeding shall require new compliance with all notice of sale procedures as provided in [section 45-1506, Idaho Code](#).

(5) Nothing in this section shall be construed to create a right to cure the default and reinstate the deed of trust under subsection (12) of [section 45-1506, Idaho Code](#), for a period of time longer than one hundred fifteen (115) days from the recording of the notice of default exclusive of the time during which a stay is in effect and if no request is made to postpone the sale under the circumstances provided in this section, the computation of time under this chapter shall be deemed unaffected by any intervening stay.

## **History.**

I.C., § 45-1506B, as added by 1983, ch. 190, § 5, p. 514.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 6 of S.L. 1983, ch. 190 declared an emergency. Approved April 9, 1983.

## **CASE NOTES**

### **Applicability.**

#### **Failure to comply.**

#### **Procedure.**

### **Applicability.**

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to § 45-1506(8); but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to § 45-1506A. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to this section. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

### **Failure to Comply.**

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of § 45-1506A. The trustee's compliance with this section was immaterial where the borrower had no notice of the first rescheduled sale date after a bankruptcy stay went into effect. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

### **Procedure.**

Unlike sales postponed under §§ 45-1506 or 45-1506A, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under this section is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a



scheduled sale that the sale is being postponed and rescheduled pursuant to subsection (3) of this section has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

**Cited** *Young v. Washington Fed. Sav. & Loan Ass'n*, 156 Bankr. 282 (Bankr. D. Idaho 1993).



**§ 45-1506C. Supplemental notice — Opportunity to request loan modification.** — (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to [section 63-602G, Idaho Code](#). Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

**IMPORTANT NOTICE:  
YOU ARE IN DANGER OF LOSING YOUR PROPERTY  
IF YOU DO NOT TAKE ACTION IMMEDIATELY**

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay \$(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to

obtain other details about your loan. You also can send a written request for this information by certified mail to: (enter the complete address).

### LOAN MODIFICATION ASSISTANCE

If you want to save your home from foreclosure but you cannot afford your current loan payments, you need to contact the beneficiary immediately to ask about any available loss mitigation programs. You may or may not qualify for a loan modification or other alternative to foreclosure.

You may request to meet with the beneficiary to discuss options for modifying your loan.

IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

WARNING: You may get offers from people who tell you they can help you keep your property. Never pay someone to help you obtain a loan modification. Help is available for free from housing counselors who are certified through the department of housing and urban development. Visit [www.hud.gov](http://www.hud.gov) for a current list of certified housing counselors in Idaho.

DATED: (enter the date)

Beneficiary name: (print name)

Beneficiary or beneficiary's agent's signature: (sign name)

Beneficiary's telephone number: (enter the toll-free telephone number)

(2)(a) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.

(b) If the trust deed, or any assignments of the trust deed, is in the Spanish language, the notice required under subsection (1) of this section and the form identified in paragraph (a) of this subsection shall be in the Spanish language.

(3) If a grantor returns the form identified in subsection (2) of this section to the beneficiary by the date specified on the form, the beneficiary or the beneficiary's agent shall review the information the grantor provided in the form and shall evaluate the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than forty-five (45) days after receiving the form, shall notify the grantor in writing whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the forty-five (45) day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(4)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall either meet with the grantor in person or speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or the beneficiary's agent does not speak to or meet with the grantor if, within seven (7) business days after the beneficiary or the beneficiary's agent attempts to contact the grantor, the grantor does not schedule a meeting, or fails to attend a scheduled meeting or telephone call.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(5) At least twenty (20) days prior to the date of sale, the trustee shall file for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, an affidavit substantially in the following form from the beneficiary or the beneficiary's agent which states that the beneficiary or the beneficiary's agent has complied with the provisions of this section. The filing of the following affidavit of compliance is conclusive evidence of compliance with this section as to any party relying on said affidavit of compliance:

AFFIDAVIT OF COMPLIANCE WITH IDAHO CODE SECTION 45-1506C

COMES NOW ....., being first duly sworn, deposes and says:

1. I am the (title — officer or agent) of (name of beneficiary), the beneficiary of the Deed of Trust recorded as instrument number (recorder's instrument number), County of (County), Idaho, the "Deed of Trust."

2. Beneficiary or Beneficiary's agent has complied with section 45-1506C, Idaho Code, in by: (a) providing the notice required in section 45-1506C(1), Idaho Code; (b) providing the loan modification request form required in section 45-1506C(2), Idaho Code; (c) evaluating the request for modification and providing a written response to the request as required in section 45-1506C(3), Idaho Code; and (d) scheduling, and if attended by the grantor of the Deed of Trust, attending, in person or by telephone, the meeting required in section 45-1506C(4), Idaho Code.

.....

SIGNATURE

(INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO FORM OF SUBSCRIPTION IS SET OUT BELOW)

STATE OF IDAHO )

)

County of ..... )

On this ..... day of (month), 20.., before me, ....., a Notary Public in and for said state, personally appeared ....., known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that such officer or agent executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

Notary Public for Idaho

Residing at .....

My Commission expires .....

(6) Whenever the attorney general has reason to believe that any person has failed to follow the requirements of this section and that proceedings would be in the public interest, he may bring an action in the name of the state against such person for enforcement of the provisions of this section with the same procedure and in the same manner as granted the attorney general and district court pursuant to section 48-606(1)(a), (b), (d), (e) and (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(7) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] and expended pursuant to [section 48-606\(5\), Idaho Code](#).

### **History.**

[I.C., § 45-1506C](#), as added by 2011, ch. 323, § 2, p. 939.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401.

### **Compiler's Notes.**

For further information on HUD housing counselors, see <https://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

The bracketed insertion in subsection (7) was added by the compiler to correct the name of the referenced fund. See § 48-606.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 4 of S.L. 2011, ch. 323 provided: “This act shall be in full force and effect on and after September 1, 2011.”

**§ 45-1507. Proceeds of sale — Disposition.** — The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee.

(2) To the obligation secured by the trust deed.

(3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear.

(4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

**History.**

1957, ch. 181, § 7, p. 345.

**CASE NOTES**

Costs recoverable by beneficiary.

Deficiency.

Non-equity proceeding.

**Costs Recoverable by Beneficiary.**

Expenses of the trustee's sale, including a reasonable charge by the trustee and a reasonable attorney's fee incurred up to the time of sale, interest accrued from the date of sale to the date of judgment at the rate provided in the promissory note, and costs of the action for a deficiency and reasonable attorney fees incurred in the action were recoverable by the beneficiary in an action to obtain a deficiency judgment. *Farber v. Howell*, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986).

**Deficiency.**

The statute provides that a debtor is entitled to any surplus of actual proceeds from a trustee's sale after the expenses of the sale, the obligations secured by the deed of trust, and any subordinate liens have been satisfied, but there is no corresponding provision for an award to the debtor measured

by the excess of fair market value over the secured debt. *Wilhelm v. Johnston*, 136 Idaho 145, 30 P.3d 300 (Ct. App. 2001).

### **Non-equity Proceeding.**

The statutory scheme for non-judicial foreclosure of deeds of trust and the distribution of surplus proceeds from a sale are not subject to the principles of equity, even if a debtor who defaulted under two separate promissory notes will obtain a windfall following the sale. *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009).



**§ 45-1508. Finality of sale.** — A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under [section 45-1506, Idaho Code](#), and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with [section 45-1506, Idaho Code](#), shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of [section 45-1506, Idaho Code](#), shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

#### **History.**

1957, ch. 181, § 8, p. 345; am. 1990, ch. 401, § 3, p. 1122.

### **STATUTORY NOTES**

#### **Legislative Intent.**

Section 5 of S.L. 1990, ch. 401 read: “The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law: “a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#); “b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#); “c. The changes reflected in Section 4 [§ 45-1510] of this act; and “d. Various mere semantical changes and corrections of obvious grammatical and typographical errors.”

#### **Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1957, Chapter 181, which is compiled as §§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.

## CASE NOTES

Applicability.

Bankruptcy.

Claims against mortgagor's successor.

Constitutionality.

Discharge of security interest.

Equitable remedies.

Good faith purchaser.

Irregularity in sale.

### **Applicability.**

The buyer protections afforded by this section apply only to sales challenged for a failure to comply with the procedural provisions of § 45-1506; good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. This section does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. *Baker v. Nationstar Mortg., LLC (In re Baker)*, 574 B.R. 184 (Bankr. D. Idaho 2017).

### **Bankruptcy.**

Where prior to the commencement of bankruptcy proceedings, a purchaser at a trust deed sale was an entity under a specific local law against whom a subsequent bona fide purchaser could not perfect an interest, notwithstanding the provisions of the general recording laws, the rights of purchaser of bankrupt debtor's residence, as of the time of the sale, could not be avoided under § 544 (a) (3) of the Bankruptcy Code (11 U.S.C. § 544 (a) (3)). *Young v. Washington Fed. Sav. & Loan Ass'n*, 156 Bankr. 282 (Bankr. D. Idaho 1993).

### **Claims Against Mortgagor's Successor.**

A mortgagee is not precluded from suing to collect the entire debt secured by a mortgage where the debt was not due and where there was no basis to foreclose the mortgage at the time the property was sold to a third party by the trustee of prior deeds of trust for less than the fair market value

of the property. *Idaho Power Co. v. Benj. Houseman Co.*, 123 Idaho 674, 851 P.2d 970 (1993).

### **Constitutionality.**

The statutory right of redemption, following an execution sale of real property, given by §§ 11-310, 11-401, 11-402 and following judicial foreclosure of a mortgage, given by § 6-101 is expressly denied to the grantor in a trust deed by this section where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is effected only in cases where the property owner by his contract so agrees. *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

### **Discharge of Security Interest.**

Although the seller of various items of fruit packing machinery had retained a security interest to secure the purchase price, a subsequent foreclosure sale of the real property to which the machinery was affixed discharged the security interest held by the seller of the machinery, where the purchase at the foreclosure sale of the real estate and fruit packing machinery was in good faith. *Northwest Equip. Sales Co. v. Western Packers, Inc.*, 623 F.2d 92 (9th Cir. 1980).

### **Equitable Remedies.**

Although this section prevents the purchaser from redeeming the property sold, it does not prevent equity from ordering compensation to the vendor for her conveyance of the property. *Pichon v. L.J. Broekemeier, Inc.*, 108 Idaho 846, 702 P.2d 884 (Ct. App. 1985).

### **Good Faith Purchaser.**

Bidder was not a good faith purchaser because the foreclosure sale was void for failure to comply with § 45-1505(2); and the bidder was not a good faith purchaser for value because he did not acquire title to the real property. *Taylor v. Just*, 138 Idaho 137, 59 P.3d 308 (2002).

### **Irregularity In Sale.**

This section does not require that the grantor to a deed of trust demonstrate harm resulting from an irregularity in a non-judicial foreclosure sale in order to have the sale set aside. The district court may not impose this additional requirement, thereby increasing the grantor's burden. *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009).

Completed foreclosure sale was not invalidated or reversed, despite any alleged error in postponement or a purported violation of § 45-1506(8), where the borrower received proper notice of the initial foreclosure sale and proper subsequent procedures remedied any prior problems with the postponement. *Gordon v. United States Bank Nat'l Ass'n*, — Idaho —, 455 P.3d 374 (2019).

**Cited** *Bear Lake W., Inc. v. Stock*, 36 Bankr. 413 (Bankr. D. Idaho 1984); *PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 200 P.3d 1180 (2009).

**§ 45-1509. Trustee's deed — Form and contents.** — (1) The trustee's deed to the purchaser at the trustee's sale under this act shall conform to the requirements of subsection (2) of this section.

(2) The trustee's deed shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the mailing and the publication of the notice of sale, the conduct of the sale and the receipt of the purchase money from the purchaser.

**History.**

1957, ch. 181, § 9, p. 345.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" in subsection (1) refers to S.L. 1957, Chapter 181, which is compiled as §§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502 to 45-1506, and 45-1507 to 45-1515.

**§ 45-1510. Trustee's deed — Recording — Effect.** — (1) When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under [section 45-1506\(7\), Idaho Code](#), shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof. For purposes of this section, the trustee's deed shall be deemed effective as of the date and time on which the sale was held if such deed is recorded within fifteen (15) days after the date of sale or the first business day following the fifteenth day if the county recorder of the county in which the property is located is closed on the fifteenth day.

(2) Where a trustee's sale held pursuant to [section 45-1506, Idaho Code](#), is invalid by reason of automatic stay provisions of the U.S. bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his/its successor in interest, may record a notice of rescission. The notice of rescission shall accurately identify the deed of trust, the recording instrument numbers used by the county recorder or the book and pages at which the trustee's deed and deed of trust are recorded, the names of all grantors, trustors and beneficiaries, the location of the property subject to the deed of trust and the reason for rescission. Such notice of rescission shall be in substantially the following form: NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day .... with respect to the following:

1. THAT .... is the duly appointed Trustee under the certain Deed of Trust dated .... and recorded .... as instrument number .... in book ....., page ....., wherein .... and .... are named as Trustors, .... is named as Trustee, .... is named as Beneficiary; 2. THAT .... is the Beneficiary of record under said Deed of Trust; 3. THAT THE DEED OF TRUST encumbers real property

located in the County of ....., State of Idaho, described as follows: Property Description

4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded .... as instrument number .... in book ....., page ....., in the office of the Recorder of .... County, State of Idaho; 5. THAT THE TRUSTEE has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale that was conducted in error due to a failure to communicate timely, notice of conditions that would have warranted a cancellation of the foreclosure that did occur on ....; 6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to return the priority and existence of all title and lienholders to the status quo ante as existed prior to the Trustee's sale.

NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PERSONS THAT THE TRUSTEE'S DEED UPON SALE DATED .... AND RECORDED .... AS .... INSTRUMENT NUMBER .... IN THE COUNTY OF ....., STATE OF IDAHO, FROM .... (TRUSTEE) TO .... (GRANTEE) IS HEREBY RESCINDED, AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF TRUST DATED ....., RECORDED .... AS INSTRUMENT NUMBER .... IN BOOK ....., PAGE ....., IS IN FULL FORCE AND EFFECT.

.....

Authorized Signatory

Acknowledgment

### **History.**

1957, ch. 181, § 10, p. 345; am. 1990, ch. 401, § 4, p. 1122; am. 2010, ch. 249, § 1, p. 639; am. 2013, ch. 174, § 1, p. 403.

## **STATUTORY NOTES**

### **Amendments.**

The 2010 amendment, by ch. 249, added the subsection (1) designation and therein added the last sentence; and added subsection (2).

The 2013 amendment, by ch. 174, substituted “prior to the trustee’s sale” for “prior to the recordation of the trustee’s deed upon sale” at the end of the first sentence in subsection (2).

### **Legislative Intent.**

Section 5 of S.L. 1990, ch. 401 read: “The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law: “a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#); “b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#); “c. The changes reflected in Section 4 [§ 45-1510] of this act; and “d. Various mere semantical changes and corrections of obvious grammatical and typographical errors.”

### **Federal References.**

The U.S. bankruptcy code, referred to in the introductory paragraph in subsection (2), is codified as [11 U.S.C.S. § 101 et seq.](#)

## **CASE NOTES**

[Fictitious grantee.](#)

[Good faith requirement.](#)

### **Fictitious Grantee.**

In order that an instrument may be operative as a deed conveying title to, or interest or estate in, land, the grantee named in the deed must be a person, natural or artificial, in existence at the time of conveyance and capable of taking title. A deed to a fictitious grantee, or which names as grantee a person who has no existence, is inoperative and void. [Kempton-Baughman v. Wells Fargo Bank, N.A., 162 Idaho 174, 395 P.3d 393 \(2017\).](#)

[Good Faith Requirement.](#)



Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of § 45-1506A. If the deed transferee knew of the deficiencies, it would not be entitled to bona fide purchaser protections set forth in this section. *Fed. Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 137 P.3d 429 (2006).

**Cited** *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

**§ 45-1511. Request for copy of notice of default or notice of sale — Marginal recordation thereof.** — Any person desiring a copy of any notice of default or any notice of sale under a deed of trust, as hereinbefore provided, at any time subsequent to the recordation of such deed of trust and prior to the recording of notice of default thereunder, may cause to be filed for record in the office of the recorder of the county or counties in which any part or parcel of the real property is situated a duly acknowledged request for a copy of any such notice of sale or default showing service upon such trustee. The request shall set forth the name and address of the person requesting copies of such notice or notices and shall identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where the same is recorded and the recorder's instrument number. The recorder shall immediately enter on the margin of the record of the deed of trust therein referred to that such request is recorded at a certain book and page in the records of his office; no request or any statement therein contained or the record thereof shall affect the title to said property or be deemed notice to any person that any person so recording such request has any right, title or interest in or lien or charge upon the property in the deed of trust referred to therein.

**History.**

1957, ch. 181, § 11, p. 345.

**CASE NOTES**

**Rights and Duties of Creditor.**

Holders of a promissory note, secured by a deed of trust, had a right to sue on their note, and this right was unaffected by the fact that they did not notify the county recorder of their interest in bank's foreclosure proceedings; this section indicates that a creditor has no "duty" to keep informed of a pending foreclosure action, and the wording of the statute reveals that a creditor has a right, not an obligation, to be notified of a foreclosure sale. *Tanner v. Shearmire*, 115 Idaho 1060, 772 P.2d 267 (Ct. App. 1989).

**§ 45-1512. Money judgment — Action seeking balance due on obligation.** — At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due upon the obligation for which such deed of trust was given as security, and in such action the plaintiff shall set forth in his complaint the entire amount of indebtedness which was secured by such deed of trust and the amount for which the same was sold and the fair market value at the date of sale, together with interest from such date of sale, costs of sale and attorney's fees. Before rendering judgment the court shall find the fair market value of the real property sold at the time of sale. The court may not render judgment for more than the amount by which the entire amount of indebtedness due at the time of sale exceeds the fair market value at that time, with interest from date of sale, but in no event may the judgment exceed the difference between the amount for which such property was sold and the entire amount of the indebtedness secured by the deed of trust.

**History.**

1957, ch. 181, § 12, p. 345.

**CASE NOTES**

Action on debt.

Applicability.

Construction.

Costs recoverable by beneficiary.

Fair market value.

Judicial foreclosure.

Notice of trustee's sale.

Obligation on deficiency not discharged.

Property owner's opinion as to value.

Purchase offer by third party.

Simultaneous foreclosure.

Sufficient proof of value.

Waiver of defense.

### **Action on Debt.**

Holders of a promissory note, secured by a deed of trust, were not precluded from obtaining a judgment on their note because the total indebtedness owed by the makers at the time of their default did not exceed the fair market value of the property at the time of the foreclosure sale; this section deals with deficiency actions by a creditor whose debts have been partially satisfied by foreclosure proceedings and does not affect a creditor's independent action to recover this indebtedness owed on the debtor's promissory note. *Tanner v. Shearmire*, 115 Idaho 1060, 772 P.2d 267 (Ct. App. 1989).

### **Applicability.**

This section affords no authority for the proposition that the holder of an unrecorded second deed of trust on a building secured as collateral should receive the protection of the antideficiency statute when he is sued on a guaranty agreement by which he has given a personal guaranty on the loan taken by a corporation for construction of the building. *First Sec. Bank v. Gaige*, 115 Idaho 172, 765 P.2d 683 (1988).

This section applies to claims by a creditor secured by a deed of trust for the balance due after a deed of trust sale; the protection is given to the borrower-grantor who gives the security interest described in the deed of trust, but not to guarantors. *First Sec. Bank v. Gaige*, 115 Idaho 172, 765 P.2d 683 (1988).

Holders of a promissory note secured by a deed of trust, who sued for a money judgment on the note, were not subject to the statutory limitations applicable to a deficiency action following foreclosure; the time limit provided for in this section applies to deficiency actions resulting from foreclosure sales; it does not apply to a creditor's action on the debt which is independent of any foreclosure proceedings; under these circumstances, a creditor has five years in which to bring an action upon his promissory note, as provided for in § 5-216. *Tanner v. Shearmire*, 115 Idaho 1060, 772 P.2d 267 (Ct. App. 1989).

The protection in this section extends only to the borrower-grantor who gives the security interest in deed of trust. *Willis v. Realty Country, Inc.*, 121 Idaho 312, 824 P.2d 887 (Ct. App. 1991).

Because the time period within which the mortgage company could have sought a deficiency judgment had long passed, the owners failed to show an accounting could be relevant to any issues in the case. *PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 200 P.3d 1180 (2009).

When a bank foreclosed on a mortgage on a cottage on land leased from the Idaho department of lands, the bank's deficiency claim was barred because (1) the cottage was real property, (2) the lease was not substantially valueless, (3) the bank had to first foreclose on the mortgage, (4) the claim was not asserted within three months of foreclosing, and (5) the claim did not relate back to original or first amended complaints, under which the claim would have been timely. *Idaho First Bank v. Bridges*, 164 Idaho 178, 426 P.3d 1278 (2018).

### **Construction.**

The "difference" contemplated by this section is obviously that created where property is sold at a foreclosure sale to a beneficiary or other purchaser at a price which is less than the balance of the indebtedness secured by the deed of trust being foreclosed. *Alpine Villa Dev. Co. v. Young*, 99 Idaho 851, 590 P.2d 578 (1979).

Section 45-1505 and this section are in pari materia and must be construed together. *Frontier Federal Sav. & Loan Ass'n v. Douglass*, 123 Idaho 808, 853 P.2d 553, cert. denied, 510 U.S. 917, 114 S. Ct. 309, 126 L. Ed. 2d 257 (1993).

### **Costs Recoverable by Beneficiary.**

Expenses of the trustee's sale, including a reasonable charge by the trustee and a reasonable attorney's fee incurred up to the time of sale, interest accrued from the date of sale to the date of judgment at the rate provided in the promissory note, and costs of the action for a deficiency and reasonable attorney fees incurred in the action were recoverable by the beneficiary in an action to obtain a deficiency judgment. *Farber v. Howell*, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986).

### **Fair Market Value.**

The district court was correct in not accepting construction cost as the equivalent of fair market value in a suit for a deficiency judgment following a nonjudicial foreclosure sale of property subject to a deed of trust. [Logan v. Grand Junction Assocs.](#), 111 Idaho 670, 726 P.2d 782 (Ct. App. 1986).

The district court committed reversible error in holding that the plaintiffs failed in their burden to prove a deficiency because the experts were unable to agree on a particular figure; the district court must reconsider, compare and weigh the evidence as a fact finder and determine the fair market value of the property in question. [Logan v. Grand Junction Assocs.](#), 111 Idaho 670, 726 P.2d 782 (Ct. App. 1986).

### **Judicial Foreclosure.**

Where beneficiaries of deed of trust opted for judicial foreclosure, rather than foreclosure by advertisement and sale, the court properly determined the amount of the deficiency judgment by proceeding under § 6-108, rather than under this section. [Thompson v. Kirsch](#), 106 Idaho 177, 677 P.2d 490 (Ct. App. 1984).

### **Notice of Trustee's Sale.**

A beneficiary was not precluded from recovering a statutory deficiency judgment allowed by this section by waiver or estoppel because the notice of trustee's sale stated that "the beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation." [Frontier Federal Sav. & Loan Ass'n v. Douglass](#), 123 Idaho 808, 853 P.2d 553, cert. denied, 510 U.S. 917, 114 S. Ct. 309, 126 L. Ed. 2d 257 (1993).

### **Obligation on Deficiency Not Discharged.**

Where guarantors of partnership loan were limited partners in company which had been holder of the property for which a deed of trust had been given to secure the loan, and by the terms of partnership agreement of the company that held the property had no right to receive specific property other than cash for their contribution, and the law in effect at time of action provided that "[a] limited partner's interest in the partnership is personal property," the guarantors had no real property interest which was subject to foreclosure, and therefore the deficiency statute was inapplicable and bank's failure to seek a deficiency judgment against the principals within the statutorily prescribed 90 days did not discharge the guarantors from their

obligation on the deficiency by operation of law. *First Interstate Bank v. Gill*, 108 Idaho 576, 701 P.2d 196 (1985).

### **Property Owner's Opinion as to Value.**

In determining the fair market value of the property, the property owner has the right to render an opinion concerning the value of his property. *Evans v. Sawtooth Partners*, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986).

### **Purchase Offer by Third Party.**

In determining the fair market value of the property, the district judge did not err by admitting evidence of a third party's offer to purchase the property several months before the trustee's sale, where the evidence was reliable, nonspeculative and free from hearsay, confrontation or other problems. *Evans v. Sawtooth Partners*, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986).

### **Simultaneous Foreclosure.**

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. *First Sec. Bank v. Stauffer*, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986).

### **Sufficient Proof of Value.**

Where there was evidence of an offer of \$325,000, one appraiser valued the property at \$265,000, and another appraiser valued the property at \$340,000, there was sufficient evidence to support the judge's finding that the property was worth at least the amount of the indebtedness at the time of the trustee's sale, approximately \$317,000. *Evans v. Sawtooth Partners*, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986).

### **Waiver of Defense.**

A guarantor may legally contract to waive a defense provided by antideficiency judgment statute. *Valley Bank v. Larson*, 104 Idaho 772, 663 P.2d 653 (1983).

Where guarantor of loan expressly waived any right to require creditor to proceed against the principal obligor, or to pursue any other available remedy, such language was broad enough to include waiver of a defense that creditor failed to seek recovery for the deficiency from debtor within the three-month time period prescribed by this section. *Valley Bank v. Larson*, 104 Idaho 772, 663 P.2d 653 (1983).

**Cited** *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787 (Ct. App. 1984); *In re Ricks*, Case No. 09-00215-JDP, 2010 Bankr. LEXIS 3784 (Bankr. D. Idaho Oct. 27, 2010).



**§ 45-1513. Transfers and trusts are conveyances.** — A deed of trust or transfer of any interest in real property in trust to secure the performance of any obligation shall be a conveyance of real property.

**History.**

1957, ch. 181, § 13, p. 345.

**CASE NOTES**

**Delivery.**

A deed of trust is a conveyance of real property and, to be valid, requires delivery of the instrument. *Defendant A v. Idaho State Bar*, 132 Idaho 662, 978 P.2d 222 (1999).

**§ 45-1514. Reconveyance upon satisfaction of obligation.** — Upon performance of the obligation secured by the deed of trust, the trustee upon written request of the beneficiary shall reconvey the estate of real property described in the deed of trust to the grantor; providing that in the event of such performance and the refusal of any beneficiary to so request or the trustee to so reconvey, as above provided, such beneficiary or trustee shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

**History.**

1957, ch. 181, § 14, p. 345.

**STATUTORY NOTES**

**Cross References.**

Mortgage foreclosure proceedings, § 6-101 et seq.

**CASE NOTES**

Accrual of interest.

Payment contemporaneous with conveyance.

Trustee's fee.

**Accrual of Interest.**

When a tender properly conditioned on delivery of a reconveyance deed has been made, no further interest accrues on the debt, regardless of the length of time that the trustee may take to deliver the reconveyance. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

A tender of full payment of the debt, conditioned on delivery of a reconveyance deed, need not include a tender of the trustee's fee in order to be effective to halt further accumulation of interest. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

**Payment Contemporaneous With Conveyance.**

A grantor of a deed of trust may condition a tender of full payment upon the contemporaneous delivery of a deed or reconveyance, and that condition does not vitiate the tender's effectiveness to terminate the accrual of interest. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

### **Trustee's Fee.**

A debtor's right to a deed of reconveyance is not contingent upon payment of a trustee's fee which is not part of the debt secured by the deed to trust. *Brinton v. Haight*, 125 Idaho 324, 870 P.2d 677 (Ct. App. 1994).

**Cited** *Murr v. Selag Corp.*, 113 Idaho 773, 747 P.2d 1302 (Ct. App. 1987).

**§ 45-1515. Time limits for foreclosure.** — The foreclosure of a trust deed by advertisement and sale shall be made and the foreclosure of a trust deed by judicial procedure shall be commenced within the time limited by the same period and according to the same provisions including extensions as provided by law for the foreclosure of a mortgage on real property.

**History.**

1957, ch. 181, § 15, p. 345.

**STATUTORY NOTES**

**Cross References.**

Mortgage foreclosure proceedings, § 6-101 et seq.

**CASE NOTES**

**Commencement of Limitation Period.**

Where the beneficiaries received, on November 8, 2012, a partial payment on a trust deed note with an original maturity date of June 28, 2006, and applied that payment to the debt, that partial payment restarted the five-year statute of limitation on any action on the note. *Monitor Fin., L.C. v. Wildfire Ridge Estates, LLC*, 164 Idaho 555, 433 P.3d 183 (2019).



## Chapter 16

# CONSUMER FORECLOSURE PROTECTION ACT

Sec.

45-1601. Legislative findings.

45-1602. Contract notice.

45-1603. Right of rescission of contract.

45-1604. Exclusions.

45-1605. Penalties.

**§ 45-1601. Legislative findings.** — The legislature finds that some persons and businesses are engaging in patterns of conduct that defraud innocent homeowners of their title, equity interest, or other value in residential dwellings under the guise of stopping or postponing a foreclosure sale. The legislature also finds this activity to be contrary to the public policy of this state and therefore establishes notice requirements governing contracts or agreements entered into during the foreclosure period. The legislature further finds that the provisions of this chapter shall be construed in such a manner that it does not inhibit transactions with legitimate lenders and investors.

**History.**

I.C., § 45-1601, as added by 2008, ch. 192, § 1, p. 601.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 45-1601 to 45-1607, relating to seed liens, which comprised S.L. 1959, ch. 152, §§ 1 to 7, p. 349, were repealed by § 1 of S.L. 1989, ch. 359. For present comparable law, see § 45-301 et seq.

**Compiler's Notes.**

S.L. 1989, ch. 359, § 3, provided that “this act shall not take effect unless and until a sufficient appropriation to support its implementation is passed for the fiscal year 1990.” An appropriation was made from the general appropriation to the Secretary of State in order to implement this act and therefore it has gone into effect.

**RESEARCH REFERENCES**

**ALR.** — Necessity of production of original note involved in mortgage foreclosure — Twenty-first century cases. [86 A.L.R.6th 411](#).

**§ 45-1602. Contract notice.** — (1) During the foreclosure period described in [section 45-1506, Idaho Code](#), any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in [section 45-525\(5\)\(b\), Idaho Code](#), subject to foreclosure must be in writing and must be accompanied by and affixed to the following notice in twelve (12) point boldface type and on a separate sheet of paper no smaller than eight and one-half (8 ½) inches by eleven (11) inches:

**“NOTICE REQUIRED BY IDAHO LAW**

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower’s interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can “save” your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to “rescue” you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website which can be found at “<http://www.hud.gov/foreclosure/index.cfm>”. HUD also maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Attorney General’s website at “<http://www2.state.id.us/ag>”.

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option.”.



(2) If during the foreclosure period described in [section 45-1506, Idaho Code](#), any contract or agreement that involves the transfer of any interest in residential real property, as defined in [section 45-525\(5\)\(b\), Idaho Code](#), was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

### **History.**

[I.C., § 45-1602](#), as added by 2008, ch. 192, § 1, p. 601; am. 2009, ch. 136, § 2, p. 417.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 45-1602 was repealed. See Prior Laws, § 45-1601.

### **Amendments.**

The 2009 amendment, by ch. 136, in subsection (1), deleted “canary yellow or some similarly colored yellow” following “on a separate sheet of” just prior to the notice.

### **Compiler’s Notes.**

The URL for information about foreclosure on the HUD website, referred to in the second paragraph of the “Notice” in subsection (1), is inoperative. Information about foreclosures may be found at [https://www.hud.gov/topics/avoiding\\_foreclosure/foreclosureprocess](https://www.hud.gov/topics/avoiding_foreclosure/foreclosureprocess).

The website for the office of the attorney general, referred to in the second paragraph of the “Notice” in subsection (1), can be found at <https://www.ag.idaho.gov>.

For further information on HUD housing counselors, see <https://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

**§ 45-1603. Right of rescission of contract.** — (1) In addition to any other legal right to cancel or rescind a contract, any person whose property is in foreclosure as described in [section 45-1505, Idaho Code](#), has the right to cancel or rescind any and all contracts or agreements relating to such property entered into during the foreclosure period within five (5) business days of entering into such contract or agreement. Neither funds nor an interest in the property shall be transferred or transferable until the five (5) days have passed.

(2) Cancellation occurs when such person gives written notice of cancellation to all other parties to the contract. Notice of cancellation need not take any particular form and, however expressed, is effective if it indicates the intention not to be bound by the contract.

(3) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the contract or agreement, shall be conclusive proof of notice of service.

**History.**

[I.C., § 45-1603](#), as added by 2008, ch. 192, § 1, p. 602.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1603 was repealed. See Prior Laws, § 45-1601.

**§ 45-1604. Exclusions.** — The provisions of this chapter shall not apply to:

- (1) Regulated lenders, as defined in [section 28-41-301, Idaho Code](#);
- (2) Any person licensed or chartered under the laws of any state or of the United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms “bank,” “trust company,” “savings and loan association,” “credit union” and “industrial loan company” shall include affiliates or wholly owned subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;
- (3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections 26-31-101 et seq., Idaho Code;
- (4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and
- (5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, “family member or members” means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood, adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

**History.**

[I.C., § 45-1604](#), as added by 2008, ch. 192, § 1, p. 602; am. 2013, ch. 54, § 15, p. 108; am. 2015, ch. 244, § 27, p. 1008.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1604 was repealed. See Prior Laws, § 45-1601.

**Amendments.**

The 2013 amendment, by ch. 54, substituted “section 28-41-301” for “section 28-41-301(37)” in subsection (1).

The 2015 amendment, by ch. 244, substituted “sections 26-31-101” for “sections 26-3101” near the end of subsection (3).

**§ 45-1605. Penalties.** — In addition to any other penalty provided by law, any person who violates the provisions of this chapter shall be liable for penalties and damages in accordance with chapter 6, title 48, Idaho Code.

**History.**

I.C., § 45-1605, as added by 2008, ch. 192, § 1, p. 603.

**STATUTORY NOTES**

**Prior Laws.**

Former § 45-1605 was repealed. See Prior Laws, § 45-1601.



Chapter 17  
NONCONSENSUAL COMMON LAW LIENS

Sec.

45-1701 — 45.1705. [Repealed.]

**§ 45-1701. Definitions. [Repealed.]**

Repealed by S.L. 2016, ch. 170, § 1, effective July 1, 2016. For prohibition of nonconsensual common law liens, see § 45-811, Idaho Code.

**History.**

I.C., § 45-1701, as added by 1996, ch. 151, § 1, p. 489.



**§ 45-1702. No duty to accept nonconsensual common law liens — Notice of invalid lien. [Repealed.]**

Repealed by S.L. 2016, ch. 170, § 1, effective July 1, 2016. For prohibition of nonconsensual common law liens, see § 45-811, Idaho Code.

**History.**

I.C., § 45-1702, as added by 1996, ch. 151, § 1, p. 489.

**§ 45-1703. Petition to district court for release of nonconsensual common law lien. [Repealed.]**

Repealed by S.L. 2016, ch. 170, § 1, effective July 1, 2016. For prohibition of nonconsensual common law liens, see § 45-811, Idaho Code.

**History.**

I.C., § 45-1703, as added by 1996, ch. 151, § 1, p. 489.

**§ 45-1704. Liens against public officers and employees. [Repealed.]**

Repealed by S.L. 2016, ch. 170, § 1, effective July 1, 2016. For prohibition of nonconsensual common law liens, see § 45-811, Idaho Code.

**History.**

I.C., § 45-1704, as added by 1996, ch. 151, § 1, p. 489; am. 2006, ch. 32, § 1, p. 95.

### **§ 45-1705. Penalties. [Repealed.]**

Repealed by S.L. 2016, ch. 170, § 1, effective July 1, 2016. For prohibition of nonconsensual common law liens, see § 45-811, Idaho Code.

#### **History.**

I.C., § 45-1705, as added by 1996, ch. 151, § 1, p. 489; am. 2006, ch. 32, § 2, p. 95.



## Chapter 18

### AGRICULTURAL COMMODITY DEALER LIENS

Sec.

45-1801. Definitions.

45-1802. Lien created — Who may have.

45-1803. When lien attaches.

45-1804. Duration of lien — Notice of lien.

45-1805. Priority of lien.

45-1806. Discharge of lien.

45-1807. Filing notice of discharge.

45-1808. Form of filing with secretary of state — Fees.

45-1809. Joinder of actions — Filing fees as costs — Attorney's fees.

45-1810. Transition from county filing to filing with the secretary of state.

**§ 45-1801. Definitions.** — As used in this chapter:

(1) “Agricultural product” means wheat, corn, oats, barley, rye, lentils, soybeans, grain sorghum, dry beans and peas, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed or other small seed, or any other agricultural commodity, including any of the foregoing, whether cleaned, processed, treated, reconditioned or whether mixed, rolled or combined in any fashion or by any means to create a product used as animal, poultry or fish feed.

(2) “Agricultural commodity dealer” means any person who contracts for or solicits any agricultural product from an agricultural producer or negotiates the consignment or purchase of any agricultural product, or receives for sale, resale or shipment for storage, processing, cleaning or reconditioning, any agricultural product, or who buys during any calendar year, at least ten thousand dollars (\$10,000) worth of agricultural products from the producer or producers of the commodity. Agricultural commodity dealer shall not mean a person who purchases agricultural products for his own use as seed or feed.

(3) “Agricultural commodity producer” means the owner, tenant or operator of land who receives all or part of the proceeds from the sale, under contract, bailment or otherwise, or delivery under contract or bailment, of agricultural products produced on that land.

(4) “Person” means an individual, trust, partnership, limited liability company, corporation, or unincorporated association or any other legal or commercial entity.

**History.**

I.C., § 45-1801, as added by 1983, ch. 202, § 1, p. 549; am. 1989, ch. 265, § 1, p. 644; am. 2001, ch. 363, § 1, p. 1279; am. 2002, ch. 308, § 1, p. 878.

**CASE NOTES**

**Livestock.**

Livestock are not agricultural products under subsection (1). **Farmers Nat'l Bank v. Green River Dairy, LLC, 155 Idaho 853, 318 P.3d 622 (2014).**



**§ 45-1802. Lien created — Who may have.** — An agricultural commodity producer or an agricultural commodity dealer who sells, or delivers under contract or bailment, an agricultural product has a lien on the agricultural product or the proceeds of the sale of the agricultural product as provided in [section 45-1804, Idaho Code](#). The lien created in this chapter may attach regardless of whether the purchaser uses the agricultural product purchased to increase the value of his livestock or whether he uses the agricultural product purchased to maintain the value, health or status of his livestock without actually increasing the value of his agricultural product.

**History.**

[I.C., § 45-1802](#), as added by 1983, ch. 202, § 1, p. 549; am. 1989, ch. 299, § 1, p. 746; am. 2000, ch. 339, § 1, p. 1132; am. 2001, ch. 363, § 2, p. 1279.

**CASE NOTES**

**Applicability.**

Plain language of the first sentence does not provide any basis for a commodity producer or dealer to maintain a lien right in livestock, as lien rights are extended only to agricultural products and the proceeds of the sale of agricultural products. [Farmers Nat'l Bank v. Green River Dairy, LLC, 155 Idaho 853, 318 P.3d 622 \(2014\)](#).

Because the lien created by this section only extends to agricultural products and the proceeds of the sale of the agricultural product, the district court erred in concluding that the sellers had an agricultural products lien on the buyer's livestock, as livestock are not agricultural products under § 45-1801(1). [Farmers Nat'l Bank v. Green River Dairy, LLC, 155 Idaho 853, 318 P.3d 622 \(2014\)](#).

**§ 45-1803. When lien attaches.** — The lien created by [section 45-1802, Idaho Code](#), attaches to the agricultural product and to the proceeds of the subsequent sale of the agricultural product on the date the agricultural product is physically delivered to the purchaser or on the date any final payment is due, and unpaid, to the agricultural commodity producer or agricultural commodity dealer under any contract or bailment, whichever occurs last.

**History.**

[I.C., § 45-1803](#), as added by 1983, ch. 202, § 1, p. 549; am. 2002, ch. 308, § 2, p. 878.

**§ 45-1804. Duration of lien — Notice of lien.** — (1) The lien provided for by [section 45-1802, Idaho Code](#), remains in effect for a period of one hundred eighty (180) days after the date of attachment, except as provided in subsection (2) of this section.

(2) The lien provided for by [section 45-1802, Idaho Code](#), is continued for a period of one (1) year from the date of filing if a written notice of lien, on a form prescribed by the secretary of state, is filed with the secretary of state by the agricultural commodity producer or the agricultural commodity dealer within one hundred eighty (180) days after the date of attachment. The form for the notice of lien shall require the following information: (a) A statement of the amount claimed by the agricultural commodity producer or agricultural commodity dealer after deducting all credits and offsets; (b) The name, address and signature of the agricultural commodity producer or agricultural commodity dealer claiming the lien; (c) The name and address of the person who purchased the agricultural product from the agricultural commodity producer or agricultural commodity dealer; (d) A description of the agricultural product charged with the lien including crop year; and (e) Such other information as the form prescribed by the secretary of state may require.

(3) The notice of lien shall be entered in a searchable database maintained by the secretary of state.

### **History.**

[I.C., § 45-1804](#), as added by 1983, ch. 202, § 1, p. 549; am. 1989, ch. 4, § 1, p. 5; am. 1989, ch. 265, § 2, p. 644; am. 2000, ch. 339, § 2, p. 1132; am. 2001, ch. 363, § 3, p. 1279; am. 2002, ch. 308, § 3, p. 878.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Amendments.**

This section was amended by two 1989 acts, ch. 4, § 1, and ch. 265, § 2, which are identical.

**§ 45-1805. Priority of lien.** — The lien created by [section 45-1802, Idaho Code](#), is preferred to a lien or security interest in favor of a creditor of the purchaser, regardless of whether the creditor's lien or security interest attaches to the agricultural product or proceeds of the sale of the agricultural product before or after the date on which the lien created by [section 45-1802, Idaho Code](#), attaches.

**History.**

[I.C., § 45-1805](#), as added by 1983, ch. 202, § 1, p. 549.

**§ 45-1806. Discharge of lien.** — The lien created by [section 45-1802, Idaho Code](#), is discharged when the lienholder receives full payment for the agricultural product. If payment is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears banking channels.

**History.**

[I.C., § 45-1806](#), as added by 1983, ch. 202, § 1, p. 549.

**§ 45-1807. Filing notice of discharge.** — (1) If a notice of lien is filed pursuant to [section 45-1804, Idaho Code](#), and the lienholder subsequently receives full payment, the lienholder shall file with the secretary of state a notice of discharge, signed by the lienholder, declaring that full payment has been received and that the lien is discharged.

(2) Upon receiving the notice, the secretary of state shall enter it in a searchable database kept to record such liens.

(3) If a lienholder, after receiving full payment, fails to file a notice of discharge of the lien within thirty (30) days after being requested in writing to do so, he is liable to the purchaser of the agricultural product for damages in the amount of three hundred dollars (\$300).

**History.**

[I.C., § 45-1807](#), as added by 1983, ch. 202, § 1, p. 549; am. 2000, ch. 339, § 3, p. 1132.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 45-1808. Form of filing with secretary of state — Fees.** — The secretary of state shall prescribe the form of the filing provided for by sections 45-1804 and 45-1807, Idaho Code. The fee for the filing provided for by [section 45-1804, Idaho Code](#) shall be five dollars (\$5.00). The fee for searching the database maintained by the secretary of state pursuant to this chapter shall be five dollars (\$5.00). There shall be no fee for filing a notice of discharge pursuant to [section 45-1807, Idaho Code](#).

**History.**

[I.C., § 45-1808](#), as added by 1983, ch. 202, § 1, p. 549; am. 1984, ch. 43, § 1, p. 71; am. 2000, ch. 339, § 4, p. 1132.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.



**§ 45-1809. Joinder of actions — Filing fees as costs — Attorney's fees.** — Any number of persons claiming liens against the same property under this chapter may join in the same action, and when separate actions are commenced, the court may consolidate them. The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

**History.**

I.C., § 45-1809, as added by 1989, ch. 4, § 2, p. 5 and by 1989, ch. 265, § 3, p. 644.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was enacted by two identical 1989 acts.

**Effective Dates.**

Section 3 of S.L. 1989, ch. 4 declared an emergency. Approved February 21, 1989.

Section 4 of S.L. 1989, ch. 265 declared an emergency. Approved April 3, 1989.

**CASE NOTES**

**Attorney Fees.**

Bank was denied attorney fees under this section, where its claim that it had a lien in the buyer's livestock was not a legitimate claim for an agricultural commodity lien. *Farmers Nat'l Bank v. Green River Dairy, LLC*, 155 Idaho 853, 318 P.3d 622 (2014).

**§ 45-1810. Transition from county filing to filing with the secretary of state.** — All liens created by this chapter on and after July 1, 2000, shall be filed with the secretary of state. All rights and duties obtained by secured parties pursuant to this chapter before July 1, 2000, shall remain in effect; provided, that liens created by this chapter before July 1, 2000, that are properly filed in the office of the county recorder before that date shall remain in effect and may be extended or renewed in the county beyond July 1, 2000.

**History.**

I.C., § 45-1810, as added by 2000, ch. 339, § 5, p. 1132.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.



## Chapter 19

### STATE LIENS

Sec.

45-1901. Purpose and scope.

45-1902. Definitions.

45-1903. Creation of lien — Attachment.

45-1904. Notice of lien — Content — Delivery.

45-1905. Effect of notice — Priority.

45-1906. Duration of notice — Lapse — Continuation.

45-1907. Amendment of notice of lien.

45-1908. Duty of filing agency to release upon satisfaction.

45-1909. Duties of secretary of state.

45-1910. Effective date and transition.

**§ 45-1901. Purpose and scope.** — (1) The purpose of this chapter is to provide a system for filing notices of liens in favor of or enforced by the state of Idaho with the office of the secretary of state.

(2) The scope of this chapter is limited to liens in the real and personal property of:

(a) Taxpayers or other persons against whom the state tax commission has liens pursuant to title 63, Idaho Code, for unpaid personal or corporation income tax, sales tax, employee withholding taxes, fuel tax, or any other amounts due under statutes administered by the commission, plus interest, penalties and additional amounts;

(b) Persons against whom the department of labor has liens pursuant to chapter 13, title 72, Idaho Code, for unpaid employment security contributions, plus interest and penalties;

(c) Persons liable for overpayment of benefits against whom the department of labor has liens pursuant to chapter 13, title 72, Idaho Code, for overpayment of benefits, plus interest;

(d) Persons against whom the department of labor has liens for wage claims pursuant to chapter 6, title 45, Idaho Code;

(e) Individuals who are subject to liens for child support delinquency pursuant to chapter 12, title 7, Idaho Code; and

(f) Individuals who are subject to liens pursuant to chapter 2, title 56, Idaho Code, for medical assistance, or the estates of such individuals.

### **History.**

**I.C., § 45-1901**, as added by 1997, ch. 205, § 1, p. 607; am. 1999, ch. 51, § 25, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: "Notwithstanding the effective dates specified in section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void."

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1902. Definitions.** — (1) “Debtor” means a taxpayer or other person against whom there is a final unpaid tax assessment collectible by the state tax commission, a person against whom the department of labor has a lien for a wage claim, unpaid contributions or overpayment of benefits, an individual who is subject to a lien for child support delinquency, or an individual who is subject to a lien for medical assistance.

(2) “Delivered” means transmission to and receipt by the secretary of state of a notice of lien or other notice in any medium to which the filing agency and the secretary of state have agreed.

(3) “Filing agency” means the state tax commission, the department of labor or the department of health and welfare.

(4) “Person” means an individual, organization or legal entity.

### **History.**

**I.C., § 45-1902**, as added by 1997, ch. 205, § 1, 607; am. 1999, ch. 51, § 26, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Compiler’s Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1903. Creation of lien — Attachment.** — Creation and attachment of liens for which notices are filed pursuant to this chapter are governed by the provisions of chapter 6 of title 45, title 63, chapter 13 of title 72, chapter 12 of title 7, and chapter 2 of title 56, Idaho Code.

**History.**

**I.C., § 45-1903**, as added by 1997, ch. 205, § 1, p. 607; am. 1999, ch. 51, § 27, p. 115.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.



**§ 45-1904. Notice of lien — Content — Delivery.** — (1) The notice of lien shall include:

- (a) The name and last known address of the debtor;
- (b) The name and address of the filing agency;
- (c) The basis for the lien, including, but not limited to, income tax, sales tax, employment security contributions, payments in lieu of contributions, overpayment of benefits, wage claims, a child support delinquency or medical assistance;
- (d) Such other information as may be required by the relevant provisions under which the lien was created and attached, or as may be agreed by the filing agency and the secretary of state.

(2) The notice of lien will be delivered to and receipt will be acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed.

(3) Each notice of lien shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

(4) A notice of lien is filed when it complies with subsection (1) of this section and has been delivered to and receipt acknowledged by the secretary of state.

### **History.**

**I.C., § 45-1904**, as added by 1997, ch. 205, § 1, p. 607; am. 1999, ch. 51, § 28, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this

act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1905. Effect of notice — Priority.** — (1) When a notice of lien is filed, the state lien is perfected in all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, to which the lien attaches pursuant to the relevant provisions of chapter 6 of title 45, title 63, chapter 13 of title 72, chapter 12 of title 7, or chapter 2 of title 56, Idaho Code.

(2) As to personal property, the perfected lien shall have the same priority as a security interest which becomes perfected under chapter 9, title 28, Idaho Code, at the same time the notice of lien is filed.

(3) As to real property, the perfected lien shall have the same priority as a mortgage which is recorded at the same time the notice of lien is filed.

(4) Nothing herein limits the authority of the state tax commission to subordinate its lien to another lien in the manner provided by [section 63-3055, Idaho Code](#).

### **History.**

[I.C., § 45-1905](#), as added by 1997, ch. 205, § 1, p. 607; am. 1999, ch. 51, § 29, p. 115.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1906. Duration of notice — Lapse — Continuation.** — (1) Except as provided in subsection (2) of this section, a notice of lien is effective for a period of five (5) years from the date of filing, unless sooner released by the filing agency. Effectiveness of the notice of lien lapses on the expiration of the five (5) year period unless a notice of continuation is filed prior to the lapse.

(2) A notice of lien for child support delinquency is effective until a notice of release of lien is filed by the department of health and welfare.

(3) Upon release or lapse of the notice's effectiveness, the state lien becomes unperfected. In that case, the lien is deemed to have been unperfected as against a person who became a purchaser or lien creditor before the release or lapse.

(4) Except as to notices of lien filed pursuant to subsection (2) of this section, a notice of continuation of effectiveness of the notice of lien may be filed by the filing agency within six (6) months prior to the expiration of the five (5) year period specified in subsection (1) of this section. The notice of continuation will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed. Upon filing of the notice of continuation, the effectiveness of the original notice of lien is continued for five (5) years after the last date to which the notice of lien was effective, whereupon it lapses unless another notice of continuation is filed prior to such lapse.

**History.**

I.C., § 45-1906, as added by 1997, ch. 205, § 1, p. 607.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

## **CASE NOTES**

### **Relationship to Other Laws.**

The five-year limitation period that governs certain state liens under this section does not apply to medical assistance liens filed under § 31-3504(4). [In re Hendricks, 2010 Bankr. LEXIS 632 \(Bankr. D. Idaho Mar. 1, 2010\).](#)

**§ 45-1907. Amendment of notice of lien.** — (1) The filing agency may amend a notice of lien in any respect by filing a notice of amendment with the secretary of state.

(2) The notice of amendment shall identify the notice of lien to which it relates, and it shall include such information and be in such medium and format as agreed by the filing agency and the secretary of state.

(3) The requirements for delivery, acknowledgment of receipt and authentication of a notice of amendment shall be the same as those prescribed for a notice of lien in [section 45-1904, Idaho Code](#).

(4) The filing of a notice of amendment does not extend the period of effectiveness of the notice of lien to which it relates.

#### **History.**

[I.C., § 45-1907](#), as added by 1997, ch. 205, § 1, p. 607.

### **STATUTORY NOTES**

#### **Cross References.**

Secretary of state, § 67-901 et seq.

#### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1908. Duty of filing agency to release upon satisfaction.** — (1) Except as to a state lien for child support delinquency, when a state lien has been satisfied, the filing agency shall, within thirty (30) days after satisfaction, file with the secretary of state a notice of release of lien.

(2) As to a state lien for child support delinquency, the department of health and welfare shall file a notice of release of lien within thirty (30) days after: (a) The delinquency has been satisfied; or (b) The underlying lien is no longer valid.

(3) The notice of release will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

#### **History.**

I.C., § 45-1908, as added by 1997, ch. 205, § 1, p. 607.

### **STATUTORY NOTES**

#### **Cross References.**

Secretary of state, § 67-901 et seq.

#### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”

The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**§ 45-1909. Duties of secretary of state.** — (1) The secretary of state shall maintain notices of state lien in his information management system in a form that permits them to be reduced to written form.

(2) The secretary of state will provide information concerning state liens on the same conditions and in the same form as he provides information on financing statements pursuant to [section 28-9-523, Idaho Code](#).

(3) The secretary of state will compile and publish a list of all effective notices of state lien which the filing agencies have identified as pertaining to debtors who are agricultural producers. The list will be published on the same schedule and conditions as the list of liens in farm crops which is published pursuant to [section 45-312, Idaho Code](#). The list of notices of state lien may be appended to the list of liens in farm crops, and no fee shall be charged in addition to the fee for the list of liens in farm crops. Failure of a filing agency to identify a debtor as an agricultural producer shall not adversely affect perfection of a state lien for any purpose.

#### **History.**

[I.C., § 45-1909](#), as added by 1997, ch. 205, § 1, p. 607; am. 2001, ch. 208, § 28, p. 703.

### **STATUTORY NOTES**

#### **Cross References.**

Secretary of state, § 67-901 et seq.

#### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: “Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void.”



The Secretary of State has so certified to the Idaho Code Commission and, thus, chapter 205 became effective as prescribed therein.

**Effective Dates.**

Section 31 of S.L. 2001, ch. 208 provided that the act should take effect on and after July 1, 2001.

**§ 45-1910. Effective date and transition.** — (1) This chapter shall be in full force and effect for all notices of state lien which are filed on or after July 1, 1998.

(2) Except for notices of state lien for child support delinquency, the transition period for filing notices of state lien shall begin on January 1, 1998, and end on June 30, 1998. The following conditions shall apply to notices which were filed or recorded before January 1, 1998, and to notices filed during the transition period:

(a) A notice of state lien which was recorded with a county recorder between January 1, 1993, and June 30, 1993, shall lapse on the fifth anniversary of the recording date, unless the filing agency records a notice of renewal with the recorder prior to the lapse and files a notice of transition and continuation with the secretary of state before July 1, 1998. A notice of transition and continuation shall include all of the information required by [section 45-1904, Idaho Code](#), the date of the recording of the original notice with the county recorder, and a statement that the effectiveness of the notice is to be continued for another five (5) year period. In the event the filing agency files a notice of transition and continuation, the effectiveness of the notice of state lien shall lapse on the tenth anniversary of the original recording date, unless the filing agency files a further notice of continuation as required by [section 45-1906\(4\), Idaho Code](#).

(b) A notice of state lien which was recorded with a county recorder between July 1, 1993, and December 31, 1997, will remain effective beyond June 30, 1998, only if a filing agency files a notice of transition with the secretary of state during the transition period. A notice of transition shall include all of the information required by [section 45-1904, Idaho Code](#), and the date of the recording of the original notice with the county recorder. After a notice of transition has been filed, the effectiveness of the notice of state lien shall lapse on the fifth anniversary of the date of the recording with the county recorder, unless the filing agency files a notice of continuation as required by [section 45-1906\(4\), Idaho Code](#).

(c) A notice of state lien which is first filed during the transition period shall be fully effective during the transition period only if the filing agency has filed a notice with the secretary of state and recorded a notice with the appropriate county recorder. A notice of state lien which is filed with the secretary of state during the transition period, and which is not recorded with the county recorder, shall be fully effective on and after July 1, 1998, and shall be effective before that date against any party with actual notice after the date of filing. A notice of state lien which is recorded with a county recorder during the transition period, but not filed with the secretary of state, shall be fully effective through June 30, 1998. A notice of state lien first filed during the transition period shall lapse on the fifth anniversary of the date of filing with the secretary of state, unless the filing agency files a notice of continuation as required by [section 45-1906\(4\), Idaho Code](#).

(3) The effectiveness of a notice of state lien for child support delinquency which was recorded with a county recorder shall lapse on July 1, 1998, unless a notice of transition is filed with the secretary of state on or before July 1, 1998. If a notice of transition is filed, the notice of state lien will remain effective until a notice of release is filed pursuant to [section 45-1908\(2\), Idaho Code](#).

(4) A notice of state lien on record with a county recorder before July 1, 1998, and not previously lapsed or released, shall be deemed to have lapsed on July 1, 1998, and shall be null, void and of no further force and effect.

(5) A notice of state lien transitioned to the secretary of state will remain in effect on the records of the secretary of state pursuant to the procedures of [section 45-1906, Idaho Code](#), despite having lapsed with the county recorder under the preceding section [subsection].

(6) Notwithstanding the provisions of [section 45-1905, Idaho Code](#), a state lien which was perfected under a prior law and transitioned to perfection under this chapter without a break in perfection shall have priority as if it had been filed under this chapter on the date of its original perfection under the prior law.

## **History.**

I.C., § 45-1910, as added by 1997, ch. 205, § 1, p. 607; am. 2012, ch. 183, § 1, p. 485.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2012 amendment, by ch. 183, added subsections (4) and (5) and renumbered former subsection (4) as subsection (6).

### **Compiler's Notes.**

Section 10 of S.L. 1997, ch. 205 read: "Notwithstanding the effective dates specified in Section [Sections] 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void."

The Secretary of State has so certified to the Idaho Code Commission and, thus, S.L. 1997, Chapter 205 became effective as prescribed therein.

The bracketed insertion at the end of subsection (5) was added by the compiler to supply the probable intended reference.

### **Effective Dates.**

Section 2 of S.L. 2012, ch. 183 declared an emergency. Approved March 29, 2012.

**Title 46**  
**MILITIA AND MILITARY AFFAIRS**

Chapter

- Chapter 1. State Militia — Organization and Staff, §§ 46-101 — 46-115.
- Chapter 2. Officers and Enlisted Men, §§ 46-201 — 46-226.
- Chapter 3. Equipment and Allowances, §§ 46-301 — 46-314.
- Chapter 4. Immunities and Privileges, §§ 46-401 — 46-409.
- Chapter 5. Selective Service Registration Awareness and Compliance, §§ 46-501 — 46-505.
- Chapter 6. Martial Law and Active Duty, §§ 46-601 — 46-610.
- Chapter 7. Armories and Military Property, §§ 46-701 — 46-727.
- Chapter 8. Miscellaneous and General Provisions, §§ 46-801 — 46-807.
- Chapter 9. Idaho National Guard Trust Fund. [Repealed.]
- Chapter 10. State Disaster Preparedness Act, §§ 46-1001 — 46-1027.
- Chapter 11. Idaho Code of Military Justice, §§ 46-1101 — 46-1106.
- Chapter 12. Statewide Communications Interoperability. [Repealed.]



## Chapter 1

### STATE MILITIA — ORGANIZATION AND STAFF

Sec.

46-101. National defense act — Definitions.

46-102. State militia — Membership — Exemptions.

46-103. State militia — Division into classes.

46-104. Enrollment of persons liable to service — Duty of county assessor — Penalty.

46-105. Appointment and enlistment of female citizens. [Repealed.]

46-106. Organized militia — Organization when called into active service.

46-107. Conformity of the national guard to federal law.

46-108. Property and fiscal officer.

46-109. General orders — Force and effect as statutes.

46-110. Governor as commander-in-chief — Foreign troops — Restrictions on entry into state.

46-111. Adjutant general.

46-112. Duties of the adjutant general.

46-113. Assistant adjutants general.

46-114. Staff officers — Aides-de-camp. [Repealed.]

46-115. Assistant adjutant general — Duties. [Repealed.]

**§ 46-101. National defense act — Definitions.** — The state of Idaho does hereby accept the benefits and provisions of the national defense act, and it is the intent of this code to conform to all laws and regulations of the United States affecting the national guard.

DEFINITIONS. — As used in this code:

(a) “National guard” means the Idaho army national guard and the Idaho air national guard.

(b) “National defense act” means the federal law for making further and more effective provisions for the national defense and for other purposes approved June 3, 1916, (Title 32, United States Code) and any and all other acts that have been or may hereafter be enacted amendatory thereof and supplementary thereto.

(c) “Uniform code of military justice” means the law for the disciplining of the armed forces of the United States (Chapter 47, Title 10, United States Code).

(d) “Officer” means commissioned officers and warrant officers.

### **History.**

1927, ch. 261, § 1, p. 510; I.C.A., § 45-101; am. 1957, ch. 174, § 1, p. 312.

## **STATUTORY NOTES**

### **Cross References.**

Buildings used by military organizations exempt from execution, § 11-605.

Constitutional provisions on militia, Idaho **Const., Art. XIV.**

Soldiers and sailors, Title 65, Idaho Code.

### **Federal References.**

The national defense act, referred to in this section, is compiled as **32 U.S.C. § 101 et seq.**



The uniform code of military justice is presently compiled as 10 U.S.C. § 801 et seq.

**Compiler's Notes.**

The term “this code” was added to this section by S.L. 1957, Chapter 174, which is compiled in chapters 1, 2, 3, and 6 in title 46, Idaho Code.

The reference enclosed in parentheses so appeared in the law as enacted.

**§ 46-102. State militia — Membership — Exemptions.** — The militia of the state of Idaho shall consist of all able-bodied citizens of the state, and all other able-bodied persons who have or shall have declared their intentions to become citizens of the United States and are residents of the state of Idaho; who shall be more than eighteen (18) years of age, and except as hereinafter provided, not more than forty-five (45) years of age, subject to the following exemptions:

1. Persons exempted from service in the militia by the constitution of the state of Idaho and by the laws of the United States from enlistment or draft into the regular army. Provided, however, that voluntary enlistments, with the written consent of the parent or guardian of any able-bodied citizen over the age of sixteen (16) years may be accepted and such enlistees inducted into the organized militia of the state of Idaho in time of war, and as classified in [section 46-103, Idaho Code](#), except that the provision for the enlistment of able-bodied citizens under the age of eighteen (18) years will terminate six (6) months following the declaration of peace.

### **History.**

1927, ch. 261, § 2, p. 510; I.C.A., § 45-102; am. 1943, ch. 46, § 1, p. 92; am. 2008, ch. 126, § 1, p. 346.

## **STATUTORY NOTES**

### **Cross References.**

Eligibility to enrollment in militia, Idaho [Const., Art. XIV, § 1](#).

### **Amendments.**

The 2008 amendment, by ch. 126, in the introductory paragraph, deleted “male” following the first occurrence of “able-bodied,” and substituted “able-bodied persons” for “able-bodied males”; and in subsection 1., twice deleted “male” following “able-bodied.”

### **Compiler’s Notes.**

This section was enacted and amended with a subsection 1., but no subsection 2.

**Effective Dates.**

Section 2 of S.L. 1943, ch. 46 declared an emergency. Approved Feb. 15, 1943.

**§ 46-103. State militia — Division into classes.** — The militia of the state of Idaho shall be divided into three (3) classes, to wit:

The national guard, the organized militia, and the unorganized militia. The national guard shall consist of enlisted personnel between the ages of seventeen (17) and sixty-four (64), organized and equipped and armed as provided in the national defense act, and of commissioned officers between the ages of eighteen (18) and sixty-four (64) years, who shall be appointed and commissioned by the governor as commander-in-chief, in conformity with the provisions of the national defense act, the rules and regulations promulgated thereunder, and as authorized by the provisions of this act. The organized militia shall include any portion of the unorganized militia called into service by the governor, and not federally recognized. The unorganized militia shall include all of the militia of the state of Idaho not included in the national guard or the organized militia.

**History.**

1927, ch. 261, § 3, p. 510; I. C.A., § 45-103; am. 1957, ch. 174, § 2, p. 312.

**STATUTORY NOTES**

**Cross References.**

Active service, when governor may call national guard, § 46-601.

Martial law, when governor may declare, § 46-602.

**Federal References.**

The national defense act, referred to in this section, is compiled as [32 U.S.C. § 101 et seq.](#)

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1927, Chapter 261, which is compiled throughout chapters 1 to 4 and 6 to 8 of this title.

**§ 46-104. Enrollment of persons liable to service — Duty of county assessor — Penalty.** — Whenever the governor deems it necessary he may order a registration under such regulations as he may prescribe, to be made by the assessors of the various counties of this state, of all persons resident in their respective counties and liable to serve in the militia. Such registration shall be on blanks furnished by the adjutant general, and shall state the name, residence, age and occupation of the person registered and their military service.

If any assessor wilfully refuses or neglects to perform any duty which may be required of him by the governor under the authority of this chapter, he shall be deemed guilty of a misdemeanor and, on conviction thereof, he shall be fined in a sum of not less than \$300.00 nor more than \$800.00.

**History.**

1927, ch. 261, § 7, p. 510; I.C.A., § 45-104; am. 1957, ch. 174, § 3, p. 312.

**STATUTORY NOTES**

**Cross References.**

Adjutant general, § 46-111.

Eligibility to enrollment in militia, Idaho [Const., Art. XIV, § 1](#).

Legislature authorized to provide for enrollment, Idaho [Const., Art. XIV, § 2](#).

**§ 46-105. Appointment and enlistment of female citizens. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, § 8, p. 510; I.C.A., § 45-105; am. 1957, ch. 174, § 4, p. 312; am. 1994, ch. 343, § 1, p. 1079, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-106. Organized militia — Organization when called into active service.** — Whenever the governor as commander-in-chief, shall call into the active service of the state the unorganized militia or any part thereof, it shall be organized into such units and shall be armed and equipped in such manner as the governor in his discretion shall deem proper. The officers thereof, shall be appointed and commissioned by the governor under such rules and regulations as he may deem expedient to promulgate.

**History.**

1927, ch. 261, § 9, p. 510; I.C.A., § 45-106; am. 1957, ch. 174, § 5, p. 312.

**§ 46-107. Conformity of the national guard to federal law.** — The governor is authorized and it shall be his duty from time to time to make and publish such orders as may be necessary to conform the national guard in organization, armament and discipline, and otherwise, to that prescribed and authorized by the national defense act and other laws of the United States and the regulations issued thereunder for the national guard.

**History.**

1927, ch. 261, § 10, p. 510; I.C.A., § 45-107; am. 1939, ch. 50, § 1, p. 91; am. 1957, ch. 174, § 6, p. 312.



**§ 46-108. Property and fiscal officer.** — The governor shall appoint with the advice and approval of the adjutant general, a property and fiscal officer who shall be selected from the national guard of Idaho and shall have had commissioned service therein for over three (3) years.

**History.**

1927, ch. 261, § 11, p. 510; I.C.A., § 45-108; am. 1957, ch. 174, § 7, p. 312.

**STATUTORY NOTES**

**Cross References.**

Adjutant general, § 46-111.

**§ 46-109. General orders — Force and effect as statutes.** — The composition of all units of the national guard including the commissioned personnel thereof, other than that specifically provided for in this act, shall be fixed from time to time by the governor as commander-in-chief, and shall be announced in general orders, and shall be in accordance with federal laws and regulations pertaining to the national guard. Every order shall have the same force and effect as if specifically enacted and provided for by the statute.

**History.**

1927, ch. 261, § 13, p. 510; I.C.A., § 45-109; am. 1957, ch. 174, § 8, p. 312.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1927, ch. 261, which is compiled throughout chapters 1 to 4 and 6 to 8 of this title.

**§ 46-110. Governor as commander-in-chief — Foreign troops — Restrictions on entry into state.** — The governor of the state by virtue of his office, shall be commander-in-chief of the national guard, except of such thereof, as may be at times in the service of the United States. No armed military force from another state, territory or district shall be permitted to enter the state of Idaho for the purpose of doing military duty therein, without the permission of the governor, unless such force has been called into active service of the United States, and is acting under authority of the president of the United States.

**History.**

1927, ch. 261, § 14, p. 510; I.C.A., § 45-110; am. 1957, ch. 174, § 9, p. 312.

**STATUTORY NOTES**

**Cross References.**

Importation of armed forces, constitutional prohibition, Idaho **Const., Art. XIV, § 6.**

**§ 46-111. Adjutant general.** — There shall be an adjutant general who shall be appointed by the governor and shall hold office during the pleasure of the governor and his commission shall expire with the term of the governor appointing him. The adjutant general shall be the commanding general of the military forces of the state and in addition to the duties delegated to him by law, he shall perform such other duties as prescribed by the governor as commander-in-chief. The adjutant general shall be commissioned in the national guard with the rank of not less than brigadier general. No person is eligible for appointment as adjutant general unless he is a federally recognized member of the national guard with current service of not less than six (6) years as a commissioned officer in the national guard of Idaho and has attained the rank of colonel or above.

**History.**

1927, ch. 261, § 18, p. 510; am. 1931, ch. 186, § 1, p. 310; I.C.A., § 45-111; am. 1957, ch. 174, § 10, p. 312; am. 1987, ch. 330, § 1, p. 689; am. 2001, ch. 141, § 1, p. 507.

**STATUTORY NOTES**

**Cross References.**

Adjutant general is custodian of military records and relics, Idaho **Const., Art. XIV, § 4.**

Payments of per diem and allowances made, § 46-605.

Representative of governor in coordination of disaster relief and civil defense, § 46-1006.

**§ 46-112. Duties of the adjutant general.** — (1) The adjutant general shall serve as head of the Idaho military division. The governor, as commander-in-chief, pursuant to his or her authority under [section 4, article IV, of the constitution](#) of the state of Idaho, shall administer and control the national guard, as that term is defined in [section 46-103, Idaho Code](#). The adjutant general is responsible to the governor for the execution and publication of all orders relating to the militia, organization, activation, reactivation, inactivation, and allocation of units, recruiting of personnel, public relations, discipline, and training of the national guard and those members of the militia inducted into the service of this state as provided in this chapter. The adjutant general shall act as military chief of staff to the governor and chief of all branches of the militia or agencies within the Idaho military division. The adjutant general may belong to the adjutants general association of the United States and to other organizations for the betterment of the national guard, subscribe to and obtain periodicals, literature, and magazines of such other organizations and pay dues and charges from moneys of this state appropriated for that purpose. Except for the authority expressly reserved for the governor under Idaho law, the adjutant general is responsible for emergency management pursuant to chapter 10, title 46, Idaho Code, and all emergency activities undertaken pursuant to chapter 10, title 46, Idaho Code, are subject to the approval of the adjutant general.

(2) The adjutant general, as the military chief of staff, will:

- (a) Act as military advisor to the governor and perform, as the governor prescribes, military duties not otherwise designated by law;
- (b) Adopt methods of administration for the national guard that are consistent with laws and regulations of the United States department of defense or any subdivision of the United States department of defense;
- (c) Supervise and direct the organization, regulation, instruction, training, discipline, and other activities of the national guard;
- (d) Attest and record all commissions issued by the governor and maintain a register of all commissioned personnel;

- (e) Keep a record of all orders and regulations pertaining to the national guard and all other writings and papers relating to reports and returns of units comprising the national guard and militia, and act as custodian of all such orders, regulations, writings, papers, and returns;
- (f) Superintend the preparation of returns, plans and estimates required by this state, by the department of the army, air force, navy and by the secretary of defense;
- (g) Control the use of and care for, preserve and maintain all military property belonging to or issued to this state and pay from moneys appropriated by the state legislature, or allocated to the state from the federal government for these purposes, the necessary expenses for labor and material incurred in the repair of military property;
- (h) Dispose of unserviceable military property belonging to this state, in accordance with applicable federal and state laws and regulations;
- (i) Pay the members of the national guard when such members are to be paid from state funds, and ensure that the members of the national guard receive pay when such members are to be paid with funds allocated by the federal government;
- (j) Be custodian of the seal of the office of adjutant general and deliver the same to his successor, and authenticate with the seal of the office of the adjutant general all orders and copies of orders issued by the adjutant general's office. An authenticated copy has the same force and effect as the original;
- (k) Present to the governor before each regular session of the legislature, or as otherwise required, an estimate of the financial requirements for state moneys for operation of the department and the national guard during the next fiscal year, in accordance with [section 67-3502, Idaho Code](#);
- (l) Coordinate and plan the execution of state activities pertaining to the inauguration of the governor of the state of Idaho and other elected state executive officers; and
- (m) Establish and administer, as in his or her judgment may be necessary and proper for military purposes, morale, welfare, and recreation programs or facilities for the benefit of the members of the Idaho military

division and their lawful dependents. The adjutant general may promulgate rules to govern the operation of morale, welfare, and recreation programs or facilities. All proceeds derived from the operation of morale, welfare, and recreation programs or facilities within the state shall, after payment of operating expenses, notwithstanding any provision of Idaho law to the contrary, be used exclusively to benefit any morale, welfare, and recreation programs or facilities established pursuant to this section. Any sales of goods on a state reservation, state training facility, or state military installation under the jurisdiction of the adjutant general are exempt from payment of state sales taxes.

(3) The adjutant general, as head of the Idaho military division, will:

(a) Be the administrator of the division;

(b) Coordinate the functions of the division and offices of the division;

(c) Subject to Idaho law, appoint, suspend, demote, promote or dismiss employees of the division. The adjutant general may delegate this authority;

(d) Appoint an auditor for the division to conduct periodic financial and compliance audits of each office in the division and perform such other duties as prescribed by law. At least annually, the auditor shall audit accounts that are open for more than twelve (12) months. The auditor shall determine within the division compliance with purchase and bidding procedures prescribed by law;

(e) Adopt, with the approval of the governor, rules necessary for the operation of the Idaho military division;

(f) Establish and administer accounts for federal, state or other moneys made available to carry out the functions of the division;

(g) Establish, abolish or reorganize the positions or organizational structure within the Idaho military division, subject to legislative appropriation, if, in the adjutant general's judgment, the modification would make the operation of the division more efficient, effective or economical;

(h) Administer the Idaho youth challenge program in accordance with [section 46-805, Idaho Code](#). In addition to moneys appropriated for the

program, the adjutant general may accept and spend moneys from any other lawful public or private source; and

(i) Submit to the governor, the president of the senate and the speaker of the house of representatives annually by July 1 a report for the Idaho military division for the preceding fiscal year, including: the strength and condition of the national guard; the business transactions of the division; a detailed statement of expenditures for all military and civilian purposes; the disposition of all military and civilian property on hand or issued; a description of the activity of the Idaho youth challenge program; and a detailed statement of the national guard tuition incentive payments program pursuant to [section 46-314, Idaho Code](#). The adjutant general will also submit any such similar returns and reports as may be required by federal laws and regulations.

(4) The adjutant general, subject only to applicable limitations prescribed under state law or rule, may:

(a) Enter into contracts with individuals, this state, political subdivisions of this state or the federal government and its agencies for the purchase, acquisition, rental or lease of lands, buildings or military material and take title in the name of this state for the establishment and maintenance of armories, subject to legislative appropriation for these purposes;

(b) Procure and contract for procurement of equipment and its issuance to members of the militia inducted into the service of this state;

(c) Enter into agreements and plans with the state universities, community colleges or any educational institution supported by federal or state moneys for promotion of the best interests of the national guard and military training of students of the institutions;

(d) Lease property acquired under this chapter for any public purpose for a period of one (1) year, which period is renewable;

(e) Convey for any public purpose in the name of this state easements on real property acquired under this chapter;

(f) Enter into contracts or agreements with the federal government that are deemed to be in the best interest of this state and the national guard;

(g) Delegate the powers and duties in this section; and



(h) Adopt methods of security for national guard personnel and for national guard reservations or facilities that are consistent with the laws, regulations or directives of the United States department of defense and the laws of this state.

**History.**

I.C., § 46-112, as added by 2016, ch. 205, § 2, p. 575.

**STATUTORY NOTES**

**Cross References.**

Military division as part of office of governor, § 67-802.

**Prior Laws.**

Former § 46-112, which comprised S.L. 1927, ch. 261, § 19, p. 510; I.C.A., § 45-112; am. S.L. 1957, ch. 174, § 11, p. 312; am. S.L. 1974, ch. 22, § 11, p. 592; am. S.L. 2001, ch. 248, § 1, p. 900; am. S.L. 2011, ch. 53, § 1, p. 117, was repealed by S.L. 2016, ch. 205, § 1, effective July 1, 2016.

**Compiler's Notes.**

For additional information on the adjutants general association of the United States, referred to in subsection (1), see <https://www.agaus.org>.

**§ 46-113. Assistant adjutants general.** — There shall be two (2) assistant adjutants general who shall be appointed by and serve at the pleasure of the adjutant general.

(a) One (1) of the assistant adjutants general shall be appointed from the Idaho army national guard and may be chief of staff to the adjutant general for all the Idaho army national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho army national guard with at least six (6) years service as commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the table of organization for the army national guard.

(b) The other assistant adjutant general shall be appointed from the Idaho air national guard and may be chief of staff to the adjutant general for all the Idaho air national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho air national guard with at least six (6) years service as a commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the tables of organization for the air national guard.

(c) In the event of the absence or inability of the adjutant general to perform his duties, he shall designate one (1) of the assistant adjutants general to perform the duties of his office as acting adjutant general. If neither assistant adjutant general is available, he may designate any national guard officer to be the acting adjutant general.

### **History.**

1927, ch. 261, § 20, p. 510; am. 1931, ch. 186, § 2, p. 310; I.C.A., § 45-113; am. 1939, ch. 50, § 2, p. 91; am. 1957, ch. 174, § 12, p. 312; am. 1978,

ch. 54, § 1, p. 101; am. 1989, ch. 354, § 1, p. 896; am. 1998, ch. 116, § 1, p. 432.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 1989, ch. 354, declared an emergency. Approved April 5, 1989.

**§ 46-114. Staff officers — Aides-de-camp. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; am. 1931, ch. 186, § 3, p. 310; I.C.A., § 45-114; am. 1950 (E.S.), ch. 24, § 1, p. 35; am. 1957, ch. 174, § 13, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-115. Assistant adjutant general — Duties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, p. 510; I.C.A., § 45-115, was repealed by S.L. 1957, ch. 174, § 14, p. 312.



## Chapter 2

### OFFICERS AND ENLISTED MEN

Sec.

46-201. Officers — Warrant officers — Enlistment of personnel — Power of governor.

46-202. Commissioned officers — Appointment and commission — Oath — Temporary appointments.

46-203. Rank of officers.

46-204. Promotion, when effective.

46-205. Vacation of commission — Discharge.

46-206. Retirement — Time of service.

46-207. Retiring officer responsible for state property — Status pending settlement of accounts.

46-208. Arrest of officers and enlisted personnel. [Repealed.]

46-209. Disobedience of orders — Trespass upon military property — Prohibition and abatement of nuisances. [Repealed.]

46-210. Enlistment — Contract and oath.

46-211. Enlistment — Period and requirements — Reenlistment.

46-212. Enlisted personnel — Discharge papers.

46-213. Enlisted personnel — Transfers.

46-214. Retirement of enlisted personnel. [Repealed.]

46-215. Accounting for property upon discharge.

46-216. Leave of absence from regular duties for military duty.

46-217 — 46-223. [Repealed.]

46-224. Entitled to restoration of position after leave of absence for military training.

46-225. Vacation, sick leave, bonus, health insurance and advancement unaffected by leave of absence.

46-226. Noncompliance of employer entitling employee to damages or equitable relief.



**§ 46-201. Officers — Warrant officers — Enlistment of personnel — Power of governor.** — The governor is hereby authorized to appoint officers and warrant officers in such numbers and in such grades, and to cause to be enlisted such numbers of enlisted personnel and airmen in the army and air national guard of this state, as are authorized by the secretary of defense, under the national defense act and the rules and regulations promulgated thereunder.

**History.**

1927, ch. 261, § 21, p. 510; I.C.A., § 45-201; am. 1957, ch. 174, § 15, p. 312.

**STATUTORY NOTES**

**Cross References.**

Constitutional authorization, Idaho [Const., Art. XIV, § 3](#).

National defense act, § 46-101.

Workmen's compensation law applies to Idaho national guard while on duty, § 72-205.

**RESEARCH REFERENCES**

**A.L.R.** — Construction and application of [37 U.S.C. § 206](#), providing compensation for military reserves and members of national guard with respect to inactive-duty training. [73 A.L.R. Fed. 2d 27](#).

**§ 46-202. Commissioned officers — Appointment and commission — Oath — Temporary appointments.** — All commissioned officers shall be appointed by the governor as commander-in-chief, and be commissioned according to the grade in the department, corps, or arm of the service in which they are appointed, and shall be assigned to duty by the commander-in-chief. They shall take and subscribe to the following oath:

“I .... do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the state of Idaho against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey orders of the president of the United States and the governor of the state of Idaho, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of .... in the national guard of the state of Idaho upon which I am about to enter, so help me God.”

The appointment of officers in the national guard shall be temporary until such appointees shall have been federally recognized under the provisions of the national defense act. Any officer so temporarily appointed as an officer of the national guard of this state is hereby authorized to exercise all powers of his office during the time said temporary appointment shall remain in force. Such temporary appointment shall expire upon written notice from the national guard bureau that federal recognition has been denied and upon receipt of said notice the governor is authorized and is hereby directed to discharge such temporary officer from the national guard; provided, that the provisions of this section shall not apply to officers of such forces of the organized and unorganized militias which may be called into active service of the state.

### **History.**

1927, ch. 261, § 22, p. 510; I.C.A., § 45-202; am. 1957, ch. 174, § 16, p. 312.

## **STATUTORY NOTES**

**Cross References.**

Equipment of officers, § 46-301.

National defense act, § 46-101.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**RESEARCH REFERENCES**

**ALR.** — Liability of officer for injury from discharge of firearms by militiaman during military exercise. [49 A.L.R.3d 762](#).

**§ 46-203. Rank of officers.** — All officers of the national guard of this state shall take precedence or relative rank, as determined by the federal laws and the rules and regulations promulgated thereunder.

**History.**

1927, ch. 261, § 23, p. 510; I.C.A., § 45-203; am. 1957, ch. 174, § 17, p. 312.

**§ 46-204. Promotion, when effective.** — When a commissioned officer or warrant officer of the national guard is promoted to higher grade and accepts same, the promotion shall not be effective until the officer has qualified for the higher office by examination as required under the provisions of the national defense act.

**History.**

1927, ch. 261, § 25, p. 510; I.C.A., § 45-204; am. 1957, ch. 174, § 18, p. 312.

**STATUTORY NOTES**

**Cross References.**

National defense act, § 46-101.

**§ 46-205. Vacation of commission — Discharge.** — Commissions of officers of the national guard shall be vacated upon resignation duly accepted by the governor; for absence without leave for three months; upon the recommendation of an efficiency board approved by the governor as provided by national guard regulations; pursuant to the sentence of a general court-martial after the approval thereof by the governor, imposing sentence of dismissal; or when an officer has been convicted in a civil court of any crime of the grade of felony; upon withdrawal of federal recognition by the secretary of the army or the secretary of the air force; provided, that a formal discharge shall not be given to any officer of the national guard until he shall have given a satisfactory clearance for all property belonging to the state or to the United States issued for the use in the military service by the national guard for which he is accountable or responsible, or both; and if discharge from the service of the national guard of the state shall be given before such satisfactory clearance for the responsibility of said property has been given, then such discharge shall [be] and is hereby declared null and void.

**History.**

1927, ch. 261, § 27, p. 510; am. 1931, ch. 186, § 4, p. 310; I.C.A., § 45-205; am. 1939, ch. 50, § 3, p. 91; am. 1957, ch. 174, § 19, p. 312.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “be” in the last sentence was inserted by the compiler to supply an apparent missing term.

**§ 46-206. Retirement — Time of service.** — Upon request, any commissioned officer, warrant officer or enlisted member of the national guard of Idaho who has a total military service in the armed forces of the United States of twenty (20) years may be placed on the retirement list. In the discretion of the adjutant general, any member may be advanced one (1) grade prior to retirement. Promotions under this section shall be honorary.

**History.**

1927, ch. 261, § 30, p. 510; I.C.A., § 45-206; am. 1957, ch. 174, § 20, p. 312; am. 1978, ch. 54, § 2, p. 101; am. 2007, ch. 109, § 1, p. 315; am. 2008, ch. 27, § 10, p. 51.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 109, rewrote this section which formerly read: “Any officer of the national guard who loses his federal recognition because of mandatory retirement may be advanced one (1) grade and may be placed upon the retired list by order of the governor as commander-in-chief. Any commissioned officer who has served as an officer in the national guard of Idaho for a period of twenty (20) years, upon his request, may be advanced one (1) grade, and placed upon the retired list. Any commissioned officer who has a total service in the armed forces of the United States and in the national guard of Idaho of fifteen (15) years, may upon his request be advanced one (1) grade and retired.”

The 2008 amendment, by ch. 27, deleted “of officers” following “Retirement” in the section catchline.

**§ 46-207. Retiring officer responsible for state property — Status pending settlement of accounts.** — A commissioned officer responsible or accountable for state funds or state property, or property or funds of the United States, intended and issued for use in the military service, issued or entrusted to him by the adjutant general or the United States property and fiscal officer, or acquired by transfer, inventory, or purchase, from any state fund or from any annual allowance of state funds or acquired in any other manner, who may tender his resignation and whose accounts are not settled, may be relieved from active duty and held as a supernumerary officer pending settlement of his accounts; and when so relieved from active duty the office in which he is so commissioned or to which he has been assigned shall be considered as vacated: provided, that a commissioned officer so held as a supernumerary officer shall be amenable to court-martial for military offenses to the same extent and in like manner as if upon the active list of officers.

**History.**

1927, ch. 261, § 31, p. 510; I.C.A., § 45-207; am. 1957, ch. 174, § 21, p. 312.



**§ 46-208. Arrest of officers and enlisted personnel. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, § 76, p. 510; I.C.A., § 45-208; am. 1957, ch. 174, § 22, p. 312; am. 1978, ch. 54, § 3, p. 101, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-209. Disobedience of orders — Trespass upon military property — Prohibition and abatement of nuisances. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, § 78, p. 510; I.C.A., § 45-209; am. 1957, ch. 174, § 23, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-210. Enlistment — Contract and oath.** — Every person enlisting in the national guard shall sign an enlistment contract, and take and subscribe to the oath of enlistment prescribed by the national defense act and regulations issued thereunder.

**History.**

1927, ch. 261, § 34, p. 510; I.C.A., § 45-210; am. 1957, ch. 174, § 24, p. 312.

**STATUTORY NOTES**

**Cross References.**

Eligibility to enrollment in militia, Idaho [Const., Art. XIV, § 1](#); § 46-102.

National defense act, § 46-101.

**§ 46-211. Enlistment — Period and requirements — Reenlistment. —**  
Hereafter the period and requirements of enlistment and reenlistment in the national guard of this state shall be the same as prescribed by the national defense act and the regulations issued thereunder.

**History.**

1927, ch. 261, § 35, p. 510; I.C.A., § 45-211; am. 1957, ch. 174, § 25, p. 312.

**STATUTORY NOTES**

**Cross References.**

National defense act, § 46-101.

**§ 46-212. Enlisted personnel — Discharge papers.** — An enlisted person discharged from the service of the national guard shall receive a discharge therefrom in writing, in such form and with such classification as is or shall be prescribed by the national defense act and regulations issued thereunder: provided, that the provisions of this section shall not apply to the discharge of any member of the unorganized militia called into the active service of the state.

**History.**

1927, ch. 261, § 36, p. 510; I.C.A., § 45-212; am. 1957, ch. 174, § 26, p. 312.

**STATUTORY NOTES**

**Cross References.**

National defense act, § 46-101.

**§ 46-213. Enlisted personnel — Transfers.** — Enlisted personnel of the national guard may be transferred upon their own application from one (1) organization to another in the same manner as prescribed in the federal regulations of the department of the army and the department of the air force. Transfers of enlisted persons and of noncommissioned officers may be made from one (1) organization to another or from one (1) arm of the service to another, when in the judgment of the adjutant general the interests of the service demand such transfers; provided, that commanders of regiments, groups, separate squadrons, or separate battalions in the active service of the state may make such transfers within their regiment, group, separate squadron, or separate battalion as they may deem advisable for the good of the service.

**History.**

1927, ch. 261, § 37, p. 510; I.C.A., § 45-213; am. 1957, ch. 174, § 27, p. 312.

**§ 46-214. Retirement of enlisted personnel. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-214; am. 1957, ch. 174, § 28, p. 312, was repealed by S.L. 2007, ch. 109, § 2. For present comparable law, see § 46-206.

**§ 46-215. Accounting for property upon discharge.** — An enlisted person who has not returned or properly accounted for all the public property belonging to the state or to the United States, issued for use in the military service, and for which he is responsible, shall not receive a full and complete discharge from the national guard of this state: provided, that if a discharge for any enlisted man shall have been given before the return of or proper accounting for said property for which he is responsible, then said discharge shall be and is hereby declared null and void.

**History.**

1927, ch. 261, § 40, p. 510; I.C.A., § 45-215; am. 1957, ch. 174, § 29, p. 312.



**§ 46-216. Leave of absence from regular duties for military duty. —**

All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States, shall be entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, time, or efficiency rating during which they shall be engaged in military duty ordered or authorized under the provisions of law. State employees assigned to “uncommon tours of duty” shall have the above-referenced one hundred twenty (120) hours of leave prorated proportionally to the number of hours in their regularly scheduled biweekly pay period. Administration of paid leave for “uncommon tours of duty” shall be consistent with the federal office of personnel management (OPM) definitions and pay administration guidance for similarly situated federal employees.

**History.**

1927, ch. 261, § 34, p. 510; I.C.A., § 45-216; am. 1957, ch. 174, § 30, p. 312; am. 2006, ch. 171, § 1, p. 530; am. 2008, ch. 126, § 3, p. 347; am. 2009, ch. 44, § 1, p. 125.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 171, rewrote the section which formerly read: “**Leave of absence from regular duties for field training — Exceptions.** All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States, shall be entitled to leave of absence from their respective duties without loss of pay, time, or efficiency rating on all days during which they shall be engaged in field training ordered or authorized under the provisions of the national defense act; provided that this shall not apply to any period of time spent in active service of the United States, except that a period of fifteen (15) days or less in reserve training in any one (1) calendar year shall not be considered time spent in active service of the United States, for the purposes of this act.”

The 2008 amendment, by ch. 126, substituted “one hundred twenty (120) hours” for “fifteen (15) days.”

The 2009 amendment, by ch. 44, added the last two sentences.

**Compiler’s Notes.**

For further information on the federal office of personnel management, referred to near the end of this section, see *<https://www.opm.gov>*.

**§ 46-217 — 46-222. Enlistment — Contract and oath — Period and requirements — Reenlistment — Enlisted Men — Discharge papers — Enlisted men and noncommissioned officers — Transfers — Noncommissioned officers — Appointment, number and transfer — Retirement of enlisted men. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

These sections, which comprised S.L. 1927, ch. 261, p. 510; I.C.A., §§ 45-217 to 45-222, were repealed by S.L. 1957, ch. 174, §§ 31 to 36, respectively.

**§ 46-223. Leave of absence from regular duties for field training.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C.A., § 45-223, as added by 1939, ch. 50, § 4, p. 91; am. 1941, ch. 59, § 1, p. 119; am. 1947, ch. 195, § 1, p. 472; am. 1953, ch. 126, § 1, p. 197, was repealed by S.L. 1957, ch. 174, § 37, p. 312.

**§ 46-224. Entitled to restoration of position after leave of absence for military training.** — Any person who is a duly qualified member of the national guard or of the reserve components of the armed forces, who is a member of an organized unit and who, in order to receive military training with the armed forces of the United States, not to exceed fifteen (15) days in any one (1) calendar year, leaves a position other than employment of a temporary nature in the employ of any employer, and who shall give evidence defining date of departure and date of return for purposes of military training ninety (90) days prior to the date of departure and who shall further give evidence of the satisfactory completion of such training immediately thereafter, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or similar position with the same status, pay and seniority. Such seniority shall continue to accrue during such period of absence, and such period of absence for military training shall be construed as an absence without leave and within the discretion of the employer. Said leave may be with or without pay.

**History.**

1955, ch. 202, § 1, p. 434.

**§ 46-225. Vacation, sick leave, bonus, health insurance and advancement unaffected by leave of absence.** — Such absence for military training shall not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his employment normally to be anticipated in his particular position. All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States shall also be entitled to their existing medical benefits for the first thirty (30) days of a deployment ordered or authorized under the provisions of the national defense act, and such entitlement shall not decrease any existing accrued leave balances.

**History.**

1955, ch. 202, § 2, p. 434; am. 2006, ch. 172, § 1, p. 531.

**STATUTORY NOTES**

**Cross References.**

National defense act, § 46-101.

**Amendments.**

The 2006 amendment, by ch. 172, inserted “health insurance” in the section heading and added the last sentence.

**Effective Dates.**

Section 2 of S.L. 2006, ch. 172 declared an emergency. Approved March 23, 2006.

**§ 46-226. Noncompliance of employer entitling employee to damages or equitable relief.** — If any employer fails to comply with any of the provisions of this act, the employee may, at his election, bring an action at law for damages for such noncompliance or apply to the district court for such equitable relief as may be just and proper under the circumstances.

**History.**

1955, ch. 202, § 3, p. 434.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1955, Chapter 202, which is compiled as §§ 46-224 to 46-226.





## Chapter 3

### EQUIPMENT AND ALLOWANCES

Sec.

46-301. Equipment of organizations — Commissioned officers.

46-302. Equipment for enlisted personnel — Punishment for unlawful use.  
[Repealed.]

46-303. Personal responsibility for money and property. [Repealed.]

46-304. Disposal of equipment — Unauthorized use of insignia —  
Penalties. [Repealed.]

46-305. Lost or damaged equipment — Liability of responsible officer.  
[Repealed.]

46-306. Loss or damage to property — Liability of responsible enlisted  
person. [Repealed.]

46-307. Uniforms prescribed. [Repealed.]

46-308. Officers responsible for money or property — Bond. [Repealed.]

46-309. Allowance for military expenses. [Repealed.]

46-310. Officers' annual allowance. [Repealed.]

46-311 — 46-313. [Repealed.]

46-314. Educational encouragement.

**§ 46-301. Equipment of organizations — Commissioned officers. —**

All organizations of the national guard shall be equipped with such arms, equipment and such other supplies as may be furnished to the state under the provisions of the national defense act. The commanding officer of any organization or detachment of the national guard of this state to which such property of the United States has been issued for use in military service shall keep said property in proper repair, in good condition, and is hereby charged with the proper custody and safekeeping thereof.

**History.**

1927, ch. 261, § 41, p. 510; I.C.A., § 45-301; am. 1957, ch. 174, § 38, p. 312.

**STATUTORY NOTES**

**Cross References.**

National defense act, § 46-101.

**§ 46-302. Equipment for enlisted personnel — Punishment for unlawful use. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-302; am. 1957, ch. 174, § 39, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-303. Personal responsibility for money and property.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-303; am. 1950 (E. S.), ch. 24, § 3, p. 35; am. 1957, ch. 174, § 40, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-304. Disposal of equipment — Unauthorized use of insignia — Penalties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-304; am. 1957, ch. 174, § 41, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-305. Lost or damaged equipment — Liability of responsible officer. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-305; am. 1950 (E. S.), ch. 24, § 4, p. 35; am. 1957, ch. 174, § 42, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-306. Loss or damage to property — Liability of responsible enlisted person. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-306; am. 1957, ch. 174, § 43, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-307. Uniforms prescribed. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-307; am. 1957, ch. 174, § 44, p. 312, was repealed by S.L. 2008, ch. 126, § 2.



**§ 46-308. Officers responsible for money or property — Bond.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, p. 510; I.C.A., § 45-308; am. 1957, ch. 174, § 45, p. 312; am. 1971, ch. 136, § 32, p. 522, was repealed by S.L. 1978, ch. 54, § 7.

**§ 46-309. Allowance for military expenses. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-309; am. 1957, ch. 174, § 46, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-310. Officers' annual allowance. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, p. 510; I.C.A., § 45-310; am. 1957, ch. 174, § 47, p. 312, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-311, 46-312. Artillery and cavalry — Allowance for hire of horses — Military expenses — Annual allowance to companies — Additional allowance by county commissioners. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

These sections, which comprised S.L. 1927, ch. 261, p. 510; I.C.A., §§ 45-311, 45-312, were repealed by S.L. 1957, ch. 174, §§ 48, 49, respectively.

**§ 46-313. Officers' annual allowance. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 72, § 39, p. 213; reen. C.L. 37:42; C.S., § 723; I.C.A., § 45-313, was repealed by S.L. 1957, ch. 174, § 50, p. 312.

**§ 46-314. Educational encouragement.** — The adjutant general of the Idaho national guard is authorized to encourage recruitment and retention of national guardsmen by providing incentive payments as set forth hereinafter. The adjutant general may authorize the payment of not more than one hundred percent (100%) of student registration fees or tuition for each semester for each member of the active Idaho national guard who attends a public or private institution of higher education in Idaho, a career technical education school, or a community college organized under the provisions of chapter 21, title 33, Idaho Code. To be eligible to receive benefits, an individual must be a member in good standing of the active Idaho national guard at the beginning of and throughout the entire semester for which benefits are received.

**History.**

1974, ch. 134, § 1, p. 1338; am. 1977, ch. 37, § 1, p. 69; am. 1978, ch. 54, § 4, p. 101; am. 1998, ch. 294, § 1, p. 975; am. 2001, ch. 322, § 1, p. 1137; am. 2016, ch. 25, § 39, p. 35; am. 2017, ch. 29, § 1, p. 51.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 25, substituted “career technical education school” for “vocational education school” near the end of the second sentence.

The 2017 amendment, by ch. 29, deleted “nontechnician” preceding “national guardsmen” near the middle of the first sentence.



## Chapter 4

### IMMUNITIES AND PRIVILEGES

Sec.

46-401. Immunity from arrest.

46-402. Immunity for acts done in performance of duty.

46-403. Equipment exempt from civil process.

46-404. Right of way in streets — Penalties.

46-405. Exemption from toll in performance of duties.

46-406. Exemption from jury duty.

46-407. Reemployment rights.

46-408. Security of the orchard training area.

46-409. The militia civil relief act.



**§ 46-401. Immunity from arrest.** — Members of the Idaho national guard, when said guard is in the service of the United States, or the state of Idaho, shall not be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

**History.**

1927, ch. 261, § 51, p. 510; I.C.A., § 45-401.

**§ 46-402. Immunity for acts done in performance of duty. —** Members of the Idaho national guard ordered into active service of the state by any proper authority shall not be liable in any court of this state, either civil or criminal for any acts done by them in performance of their duty. When suit or proceedings shall be commenced in any court by any person against any officer of the national guard of this state, for any act done by such officer in his official capacity, in the discharge of any duty under this act; or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceedings, to file security for the payment of costs that may be awarded to the defendant therein. In case the plaintiff shall be nonsuited or have a verdict or judgment rendered against him, the defendant shall recover treble costs.

**History.**

1927, ch. 261, § 52, p. 510; I.C.A., § 45-402.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the second sentence refers to S.L. 1927, Chapter 261, which is compiled throughout chapters 1 to 4 and 6 to 8 of this title.

**CASE NOTES**

**Purpose.**

This section is a grant of immunity limited to members of the National Guard while ordered into active service of the state. *Baca v. State*, 119 Idaho 782, 810 P.2d 720 (1991).

**RESEARCH REFERENCES**

**ALR. —** Liability for injury by firearms in the course of a military exercise, use of firearms in such case as a nuisance. 49 A.L.R.3d 762.

**§ 46-403. Equipment exempt from civil process.** — Uniforms, arms, and equipment, required by law or regulations to be owned by officers of the national guard of this state, and all uniforms, arms, equipment, or other property of state or the United States issued to said officers or enlisted men of the national guard of this state, for use in the military service shall be exempt from all suits, distresses, executions, or sales for debt or payment of taxes.

**History.**

1927, ch. 261, § 53, p. 510; I.C.A., § 45-403.

**STATUTORY NOTES**

**Cross References.**

Equipment of organizations, § 46-301.

**§ 46-404. Right of way in streets — Penalties.** — The commanding officer of any portion of the Idaho national guard called into the active service of the state when performing any military duty in any street or highway, may require any or all persons in such street or highway to yield the right of way to said national guard: provided, that the carriage of United States mails, the legitimate functions of the police, and the progress and operations of hospitals, ambulances, fire engines, and fire departments shall not be interfered with thereby. All others who shall hinder, delay, or obstruct any portion of the national guard on active duty in the service of the state in the performance of any military duty or who shall attempt to do so, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00) or by imprisonment for not less than three (3) months nor more than one (1) year, or both.

**History.**

1927, ch. 261, § 54, p. 510; I.C.A., § 45-404.

**§ 46-405. Exemption from toll in performance of duties.** — Any person belonging to the Idaho national guard going to or returning from any parade, encampment, drill or meeting which he may be required to attend under the laws and regulations for said national guard, shall, together with his conveyance and the military property of the state or of the United States, or both, in his charge, be allowed to pass free through all toll gates, and over all toll bridges, and ferries, if he is in uniform or if he presents an order for duty or a certificate from his commanding officer that he is a member of the Idaho national guard.

**History.**

1927, ch. 261, § 55, p. 510; I.C.A., § 45-405.

**§ 46-406. Exemption from jury duty.** — Any member of the national guard shall be exempt from sitting or serving as juror in any of the courts of this state, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required by his enlistment or commission. No member of the national guard of this state shall be required to serve on any posse comitatus.

**History.**

1927, ch. 261, § 56, p. 510; I.C.A., § 45-406; am. 1978, ch. 54, § 5, p. 101.

**§ 46-407. Reemployment rights.** — (a) Any member of the Idaho national guard who is ordered to duty by the governor, or any Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state, and who at the time of such order to duty is employed by any employer other than the United States government, shall be entitled to reemployment as set forth in [section 46-409, Idaho Code](#).

(b) If the member is still qualified to perform the duties of the position he held at the time of the order to duty, he shall be restored by the employer or the employer's successor in interest to that position or one of like seniority, status and pay. If the member is not qualified to perform the duties of such position by reason of disability sustained during the period of duty, but is qualified to perform the duties of any other positions in the employ of the employer, then the employer must offer the member that position which he is qualified to perform which is most similar to his former position in seniority, status and pay.

(c) Any person who is reemployed under this section shall not be discharged without cause within one (1) year after such reemployment.

(d) If any employer fails or refuses to comply with this section, the district court in the county in which the member was employed shall have the power, upon petition by the member, to compel the employer to comply with this section and to compensate the member for lost wages and benefits, for costs of the action, and for reasonable attorney's fees. The court shall order a speedy hearing in any such case and advance it on the calendar.

### **History.**

[I.C., § 46-407](#), as added by 1984, ch. 139, § 1, p. 327; am. 2007, ch. 276, § 1, p. 805.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 276, in subsection (a), inserted “or any Idaho employee who is a member of the national guard of another state and who is called into active service by the governor of that state,” and substituted “as set forth in [section 46-609, Idaho Code](#)” for subsections (a) (1) through (a)(5), which read: “(1) The position in which he was employed was not a temporary position; “(2) His release from duty was under honorable conditions; “(3) He remains physically qualified for employment; “(4) The period of duty did not exceed one (1) year; and “(5) Application for reemployment is made within thirty (30) days subsequent to release from duty.”



**§ 46-408. Security of the orchard training area.** — Employees of the military division of the state of Idaho who are performing security duties at the Orchard training area located in Ada and Elmore counties may, in addition to their power to protect and secure military property and persons, arrest and detain for civil law enforcement authorities, any person who commits a violation of the criminal laws of this state in their presence. Persons so detained shall be released to the custody of civil law enforcement authorities as soon as practicable. The employees hired to perform security duties at the Orchard training area shall complete level 1 POST academy training. Employees performing duties under this section are “employees” under sections 6-902, 6-903 and 6-917, Idaho Code, and are not excluded by the exceptions to governmental liability under section 6-904 4. or 5., Idaho Code.

**History.**

I.C., § 46-408, as added by 2000, ch. 86, § 1, p. 188.

**STATUTORY NOTES**

**Cross References.**

Peace officer standards and training (POST), § 19-5101 et seq.

**Effective Dates.**

Section 2 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 29, 2000.

**§ 46-409. The militia civil relief act.** — (1) As used in this section, the following terms have the following meanings:

(a) “Active member” means any member of the air or army national guard who is called or ordered by the governor to state active duty, or to duty other than for training under title 32 U.S.C., or ordered by competent federal authority into active federal service under title 10 U.S.C.

(b) “Be called or ordered by the governor” means to be called or ordered by the governor to state active duty or to duty other than for training under title 32 U.S.C.

(c) “Duty other than for training” means any state active duty or title 32 U.S.C. duty other than training upon the call or order of the governor, or active federal service under title 10 U.S.C. Duty other than for training does not include weekend drill, annual training (generally fifteen (15) days) as part of normal national guard service, and does not include attendance at military schools.

(d) “Employee” means any person employed by a public or private employer.

(e) “Servicemembers civil relief act (SCRA)” means the provisions of **50 U.S.C. App. section 3901 et seq.**, which protects active military service members.

(f) “State active duty” means any active duty performed by an active member of the national guard in accordance with this title when called or ordered by the governor.

(g) “Uniformed services employment and reemployment rights act of 1994 (USERRA)” means the provisions of **38 U.S.C. section 4301 et seq.**, which gives employees who leave a civilian job to perform military service the right to return to the civilian job held before entering military service with the rights to seniority, to purchase insurance coverage and purchase retirement credit.

(2) Whenever any active member of the national guard in time of war, armed conflict, or emergency proclaimed by a governor or by the president of the United States, shall be called or ordered by a governor to state active duty, or to duty other than for training pursuant to title 32 U.S.C., the provision as then in effect of the servicemembers civil relief act, [50 U.S.C. App. section 3901 et seq.](#), and the uniformed services employment and reemployment rights act, [38 U.S.C. section 4301 et seq.](#), shall apply.

(3) With reference to [50 U.S.C. App. section 4012](#), the adjutant general or his designee shall be responsible to execute certificates of service referred to therein.

### **History.**

[I.C., § 46-409](#), as added by 2003, ch. 251, § 21, p. 650; am. 2004, ch. 59, § 1, p. 277; am. 2007, ch. 276, § 2, p. 805; am. 2016, ch. 122, § 1, p. 355.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 46-409, which comprised S.L. 2002, ch. 101, § 1, p. 276, was repealed by S.L. 2003, ch. 251, § 1, effective July 1, 2003.

### **Amendments.**

The 2007 amendment, by ch. 276, in subsection (1)(a), deleted “Idaho” preceding “air or army national guard”; in subsections (1)(f) and (2), deleted “Idaho” preceding “national guard”; and in subsection (2), twice substituted “a governor” for “the governor.”

The 2016 amendment, by ch. 122, deleted “for thirty (30) consecutive days or more” throughout the section; updated the federal references in paragraph (1)(e) and subsections (2) and (3); in paragraph (1)(b), deleted “unless training is required as part of thirty (30) days of the consecutive duty” following “duty other than training” and “unless such attendance is required as part of, or occurs in conjunction with thirty (30) days of consecutive duty upon the call or order of the governor, or by order of competent federal authority” at the end; substituted “Servicemembers” for “Soldiers’ and sailors” in paragraph (1)(e); substituted “Uniformed services” for “Uniform services” in paragraph (1)(g); and, in subsection (2),

substituted “servicemembers” for “soldiers’ and sailors” and “uniformed services” for “uniform services”.

### **Federal References.**

With the revision of Title 50 of the United States Code, the servicemembers civil relief act (SCRA), referred to throughout this section, is codified as **50 U.S.C. § 3901 et seq.**

### **Compiler’s Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 5 of S.L. 2003, ch. 251 provided: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect when the Governor enters an order, and files it with the Secretary of State, calling or ordering members of the Idaho National Guard to state active duty or to Title 32 U.S.C. duty other than for training as defined in Section 1 of this act, or on July 1, 2003, whichever occurs first.”

Section 2 of S.L. 2004, ch. 59 declared an emergency. Approved March 16, 2004.



## Chapter 5

# SELECTIVE SERVICE REGISTRATION AWARENESS AND COMPLIANCE

Sec.

46-501. Purpose of the chapter.

46-502. Legislative findings.

46-503. Eligibility for postsecondary education and financial assistance —  
Responsibility to verify compliance.

46-504. Eligibility for employment — Responsibility to verify compliance.

46-505. Exceptions to the requirements of this chapter.

**§ 46-501. Purpose of the chapter.** — The purpose of this chapter is to encourage compliance with the federal military selective service act and to protect the eligibility of the citizens of this state who are subject to the provisions of the federal statute to receive federal financial assistance for postsecondary education and for employment with the executive branch of the federal government. The federal selective service registration awareness and compliance act requires persons subject to the provisions of the federal military selective service act to be in compliance with the requirements of that federal statute as a condition of eligibility for enrollment at a state-supported institution of postsecondary education, or for state-supported scholarships, programs of financial assistance funded by state revenue including federal funds, gifts or grants accepted by the state, or for employment by the state or any political subdivision.

**History.**

I.C., § 46-501, as added by 1999, ch. 375, § 1, p. 1024.

**STATUTORY NOTES**

**Federal References.**

The military selective service act, referred to in this section, is compiled as 50 USCS § 3801 et seq.

**§ 46-502. Legislative findings.** — The legislature of the state of Idaho finds that the military selective service act at **50 U.S.C. sec. 451** [sec. 3801] et seq. requires all male citizens and every other male person residing in the United States, except for lawfully admitted nonimmigrant aliens, upon reaching their eighteenth birthday to register with the United States selective service system. The legislature further finds that federal statutes limit eligibility for federal student financial assistance and eligibility for employment within the executive branch of the federal government to persons who are in compliance with the requirements of the federal military selective service act.

**History.**

**I.C., § 46-502**, as added by 1999, ch. 375, § 1, p. 1024.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to correct the federal reference.



**§ 46-503. Eligibility for postsecondary education and financial assistance — Responsibility to verify compliance.** — (1) A person may not enroll in a state-supported institution of postsecondary education unless he is in compliance with the federal military selective service act.

(2) A person may not receive a loan, grant, scholarship or other financial assistance for postsecondary education funded by state revenue, including federal funds or gifts and grants accepted by this state, or receive a student loan guaranteed by the state unless he is in compliance with the federal military selective service act.

(3) It shall be the duty of all officials having charge of and authority over state-supported institutions of postsecondary education and over the granting of state-supported financial assistance for postsecondary education to assure themselves that applicants are in compliance with the federal military selective service act. The institutions are authorized to develop the necessary form to allow the applicant to certify compliance with the selective service act.

**History.**

I.C., § 46-503, as added by 1999, ch. 375, § 1, p. 1024.

**STATUTORY NOTES**

**Federal References.**

The military selective service act, referred to in this section, is compiled as [50 USCS § 3801 et seq.](#)

**§ 46-504. Eligibility for employment — Responsibility to verify compliance.** — (1) No male person who has attained the age of eighteen (18) years who fails to be in compliance with the federal selective service act shall be eligible for employment by or service for the state of Idaho, or a political subdivision of the state, including all boards and commissions, departments, agencies, institutions and instrumentalities.

(2) It shall be the duty of all officials having charge of and authority over hiring of employees by the state or political subdivisions of the state to assure themselves that applicants are in compliance with the federal military selective service act. The hiring authorities are authorized to develop the necessary form to allow the applicant to certify compliance with the selective service act.

**History.**

I.C., § 46-504, as added by 1999, ch. 375, § 1, p. 1024.

**STATUTORY NOTES**

**Federal References.**

The military selective service act, referred to in this section, is compiled as **50 USCS § 3801 et seq.**

**§ 46-505. Exceptions to the requirements of this chapter.** — A person shall not be denied a right, privilege or benefit under this chapter by reason of failure to present himself for and submit to the requirement to register pursuant to the federal military selective service act if:

(1) The requirement for the person to so register has terminated or become inapplicable to the person; or

(2) The person is serving or has already served in the armed forces, or has a condition that would preclude acceptability for military service.

**History.**

I.C., § 46-505, as added by 1999, ch. 375, § 1, p. 1024.

**STATUTORY NOTES**

**Federal References.**

The military selective service act, referred to in the introductory paragraph, is compiled as **50 USCS § 3801 et seq.**



## Chapter 6

### MARTIAL LAW AND ACTIVE DUTY

Sec.

46-601. Authority of governor.

46-602. Proclamation of martial law.

46-603. Active duty — Idaho code of military justice in force — Court-martial — Additional jurisdiction. [Repealed.]

46-604. Cooperation of militia with civil authorities — Calling out military forces.

46-605. Pay on active duty.

46-606. [Repealed.]

46-607. Pay on active duty — State liable for expenses and claims.

46-608. Pensions for death in active service. [Repealed.]

46-609. Officers and enlisted personnel on special duty — Compensation and allowances.

46-610. Military maneuvers and camps — Compensation. [Repealed.]

**§ 46-601. Authority of governor.** — (1) The governor shall have the power in the event of a state of extreme emergency to order into the active service of the state, the national guard, or any part thereof, and the organized militia, or any part thereof, or both as he may deem proper.

“State of extreme emergency” means: (a) the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, or any part thereof, caused by an enemy attack or threatened attack; or (b) the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, or any part thereof, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, insurrection, breach of the peace, which conditions by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any county, any city, or any city and county.

(2) During a period of a state of extreme emergency, the governor shall have complete authority over all agencies of the state government, including all separate boards and commissions, and the right to exercise within the area or regions wherein the state of extreme emergency exists all police power vested in the state by the constitution and the laws of the state of Idaho. In the exercise thereof he is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property. Such rules, regulations and orders shall, whenever practicable, be prepared in advance of extreme emergency and the governor shall cause widespread publicity and notice to be given of such rules, regulations and orders. Rules, regulations and orders issued under the authority of this section and prepared in advance of a state of extreme emergency shall not become operative until the governor proclaims a state of extreme emergency. Such rules, regulations and orders shall be in writing and shall take effect upon their issuance. They shall be filed in the office of the secretary of state as soon as possible after their issuance. A copy of such rules, regulations and orders shall likewise be filed in the office of the county clerk of each county, any portion of which is included within the area wherein a state of extreme emergency has been proclaimed. Whenever the state of extreme emergency has been ended by either the

expiration of the period for which it was proclaimed or the need for said state of extreme emergency has ceased, the governor shall declare the period of the state of extreme emergency to be at an end.

(3) During the continuance of any proclaimed state of extreme emergency, insurrection or martial law, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose additional restrictions on the lawful possession, transfer, sale, transport, storage, display or use of firearms or ammunition.

**History.**

1927, ch. 261, § 5, p. 510; I.C.A., § 45-601; am. 1957, ch. 174, § 58, p. 312; am. 2009, ch. 215, § 1, p. 674.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2009 amendment, by ch. 215, redesignated former subsections (a) and (b) as subsections (1) and (2), respectively, and changed the designations in the second paragraph of subsection (1); and added subsection (3).

**CASE NOTES**

**Cited** [\*Inama v. Boise County\*, 138 Idaho 324, 63 P.3d 450 \(2003\).](#)

**§ 46-602. Proclamation of martial law.** — Whenever a state of extreme emergency has been proclaimed by the governor, the governor if in his judgment the maintenance of law and order will thereby be promoted, and in addition to the proclaiming of said state of extreme emergency, may by proclamation declare the state, county, or city, or any specified portion thereof, to be in a state of insurrection and may declare martial law therein.

**History.**

1927, ch. 261, § 4, p. 510; I.C.A., § 45-602; am. 1957, ch. 174, § 59, p. 312.



**§ 46-603. Active duty — Idaho code of military justice in force — Court-martial — Additional jurisdiction.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, § 6, p. 510; I.C.A., § 45-603; am. 1957, ch. 174, § 60, p. 312; am. 1978, ch. 54, § 6, p. 101, was repealed by S.L. 2008, ch. 126, § 2.

**§ 46-604. Cooperation of militia with civil authorities — Calling out military forces.** — When the national guard or the organized militia shall be ordered into the active service of the state during a state of extreme emergency, or for any other cause, the commanding officer of the military personnel shall cooperate with the civil officers to the fullest extent, consistent with the accomplishment of the object, for which the military personnel were called; the civil officials may express to the commander of the military personnel the general or specific object which the civil officials desire to accomplish, but the tactical direction of the military personnel, the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil officers are left solely to the officers in charge of the military personnel. In case of any breach of the peace, tumult, riot, resistance to process of this state, or a state of extreme emergency, or imminent danger thereof, the sheriff of a county may call for aid upon the commander-in-chief of the national guard.

**History.**

1927, ch. 261, § 87, p. 510; I.C.A., § 45-604; am. 1957, ch. 174, § 61, p. 312.

**STATUTORY NOTES**

**Cross References.**

Governor as commander-in-chief, Idaho [Const., Art. IV, § 4](#) and [§ 46-110](#).

**§ 46-605. Pay on active duty.** — When the national guard or any part thereof is ordered on active duty in the service of the state, the enlisted personnel, the commissioned officers and warrant officers so ordered shall be entitled to the same pay as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States and they shall be entitled to the same allowances as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States. All payments of pay and allowances under this section shall be made by the adjutant general. No deductions shall be made from the pay of officers or enlisted personnel in active service of the state for dues or other financial obligations imposed by any bylaw, rules or regulations of a civil character. When lodging or meals, or both, cannot be provided by the state, the adjutant general may pay a per diem in addition to the pay and allowances. Nothing in this section shall preclude officers or enlisted personnel in active service of the state from accepting, in lieu of the pay entitlement provided above, greater pay and allowances that may be available from any other government department or agency through cooperative agreement or otherwise.

### **History.**

1927, ch. 261, § 71, p. 510; I.C.A., § 45-605; am. 1957, ch. 174, § 62, p. 312; am. 1974, ch. 135, § 1, p. 1339; am. 1996, ch. 411, § 1, p. 1372; am. 2003, ch. 70, § 1, p. 236; am. 2014, ch. 55, § 1, p. 133.

## **STATUTORY NOTES**

### **Amendments.**

The 2014 amendment, by ch. 55, in the first sentence, deleted “be entitled to pay of fifty-five dollars (\$55.00) per day or shall” preceding “be entitled to the same pay” and deleted “whichever sum is greater” preceding “and they shall be entitled”.

### **Effective Dates.**

Section 2 of S.L. 1996, ch. 411 declared an emergency and provided that the act should be in full force and effect on and after its passage and

approval, retroactive to January 1, 1996. Approved March 20, 1996.

**§ 46-606. Incapacity as result of active duty — Claims. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 46-606**, as added by 1927, ch. 261, § 72, p. 510; I.C.A., § 45-606; am. 1957, ch. 174, § 63, p. 312, was repealed by S.L. 1999, ch. 118, § 1, effective July 1, 1999.

**§ 46-607. Pay on active duty — State liable for expenses and claims.**

— All officers and enlisted personnel of the national guard not in the service of the United States, while on duty or assembled therefor, pursuant to the orders of the governor, or any other civil officer authorized by law to make such demand on the military forces of the state in case of a state of extreme emergency, or threats thereof, or whenever called upon in aid of civil authorities, shall receive the same pay and allowances for such service as that prescribed in [section 46-605, Idaho Code](#); and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty, and transporting and subsisting the military personnel as well as the expense incurred for pay, care and subsistence of officers and enlisted personnel shall be paid by the state.

**History.**

1927, ch. 261, § 73, p. 510; I.C.A., § 45-607; am. 1957, ch. 174, § 64, p. 312; am. 1999, ch. 118, § 2, p. 352.

**§ 46-608. Pensions for death in active service. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, § 90, p. 510; I.C.A., § 45-608; am. 1957, ch. 174, § 65, p. 312, was repealed by S.L. 1978, ch. 54, § 7.

**§ 46-609. Officers and enlisted personnel on special duty — Compensation and allowances.** — Officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the adjutant general, if with their consent, for a period not to exceed seventy-two (72) hours without the approval of the governor, or at the direction of the governor as commander-in-chief, with or without their consent. They shall receive the pay and allowances provided in [section 46-605, Idaho Code](#), during the time they may continue upon duty under such order.

**History.**

1927, ch. 261, § 32, p. 510; I.C.A., § 45-609; am. 1957, ch. 174, § 66, p. 312; am. 1998, ch. 98, § 1, p. 347; am. 2007, ch. 275, § 1, p. 805.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 275, rewrote the section, which formerly read: “Commissioned officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the governor as commander-in-chief, with or without their consent, and if with their consent, notwithstanding the provisions of sections 46-605 and 46-607, Idaho Code, such duty may be without any pay or allowances, but if without consent, they shall receive the same pay and allowances as prescribed in [section 46-605, Idaho Code](#), during the time they may continue upon duty under such order.”

**RESEARCH REFERENCES**

**A.L.R.** — Construction and application of [37 U.S.C. § 206](#), providing compensation for military reserves and members of national guard with respect to inactive-duty training. [73 A.L.R. Fed. 2d 27](#).



**§ 46-610. Military maneuvers and camps — Compensation.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1927, ch. 261, § 75, p. 510; I.C.A., § 45-610; am. 1957, ch. 174, § 67, p. 312, was repealed by S.L. 2008, ch. 126, § 2.



## Chapter 7

### ARMORIES AND MILITARY PROPERTY

Sec.

46-701. Expenses of armories and other facilities for national guard.

46-702 — 46-704. [Repealed.]

46-705. Leases of military property — Approval.

46-706. Title.

46-707. Definitions.

46-708. Administration.

46-709. General powers and duties.

46-710. Advisory armory board of trustees. [Repealed.]

46-711. Survey and planning activities.

46-712. Construction program.

46-713. Construction, expansion and rehabilitation of armories —  
Supervision by adjutant general.

46-714. Approval of board of examiners.

46-715. Application for federal funds for survey, planning and construction  
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construction of armories authorized.

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- 46-722. Acquisition of armory sites, agreements for federal assistance, special fund and tax levies authorized.
- 46-723. Joint ownership of armory.
- 46-724. Armories constructed with use of federal funds regulated by adjutant general — Armory advisory committee.
- 46-725. Availability of armory for emergency and disaster relief purposes.
- 46-726. Reversion of armory to specified government units when not required for national guard.
- 46-727. Title.

**§ 46-701. Expenses of armories and other facilities for national guard.** — Armories, stables, storehouses, arsenals, depots, and other agencies and facilities for the use of the national guard shall be built by the state, repairs thereto, and the maintenance, and necessary expenses for heating, lighting, and for water, shall be paid by the state, except that the state pay only such part of such expense for water, heat, or light, as was incurred for military purposes: provided further, that no moneys of the state shall be expended for any of the purposes provided in this section unless the funds be from an appropriation made by the legislature for such specific purpose.

**History.**

1927, ch. 261, § 82, p. 510; I.C.A., § 45-701.

**§ 46-702. Armory commission — Powers and duties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, § 83, p. 510; am. 1931, ch. 186, § 8, p. 310; I.C.A., § 45-702; am. 1941, ch. 121, § 1, p. 244; am. 1951, ch. 276, § 1, p. 583, was repealed by S.L. 1972, ch. 174, § 1, p. 434.

**§ 46-703. Armory boards — Local board of supervisors. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, § 84, p. 510; I.C.A., § 45-703, was repealed by S.L. 1951, ch. 276, § 2, p. 583.

**§ 46-704. Armory board of control — Powers and duties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, § 85, p. 510; I.C.A., § 45-704, was repealed by S.L. 1951, ch. 276, § 3, p. 583.



**§ 46-705. Leases of military property — Approval.** — The adjutant general may execute a lease on any building, ground, or target range owned by the state, for a period of not to exceed five (5) years with renewal privileges thereon, at such rate of compensation as the adjutant general shall deem just and reasonable when said buildings, grounds or target ranges are not required for military purposes: provided, that said lease shall not become effective until the governor shall have approved the same: provided further, that any lease or license covering any building, grounds, or target range shall be revocable at the pleasure of the governor, and no action shall accrue against or liability be incurred by the state by reason of the revocation of such lease or license.

**History.**

1927, ch. 261, § 86, p. 510; I.C.A., § 45-705; am. 1951, ch. 276, § 4, p. 583.

**§ 46-706. Title.** — This act may be cited as the “Armory Construction Act.”

**History.**

1953, ch. 147, § 1, p. 236.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719. Chapter 52 of S.L. 1955 added what is codified as §§ 46-720 to 46-727 to S.L. 1953, Chapter 147, and the definitions in § 46-707 seemingly apply to those sections; but those sections are part of the Armory and Emergency Relief Facilities Act, defined in § 46-727.

**§ 46-707. Definitions.** — As used in this act:

- (a) “Adjutant general” means the adjutant general of the State of Idaho;
- (b) “The Federal Act” means **Public Law No. 783 of the 81st Congress, (64 Stat. 829-832)**, entitled “The National Defense Facilities Act.”
- (c) “National Guard Bureau” means the National Guard Bureau of the Department of the Army and National Guard Bureau of the Department of the Air Force.
- (d) “Idaho Military Facility” means an armory, readiness center, building, storehouse or training facility under the control of the Idaho National Guard and/or Idaho Military Division.
- (e) “Idaho National Guard” means the Idaho Army National Guard and the Idaho Air National Guard.

**History.**

1953, ch. 147, § 2, p. 236; am. 1989, ch. 34, § 1, p. 44; am. 2017, ch. 30, § 1, p. 51.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 30, added subsection (d), redesignated former subsection (d) as subsection (e), and deleted former subsection (e), which read: “Armory” means a building, storehouse, repository, arsenal, depot or training facility on land owned, leased, licensed or otherwise under the control of the Idaho National Guard”.

**Federal References.**

**Public Law 81-783**, referred to in subsection (b), was repealed by Act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. Present comparable provisions may be found at **10 USCS § 18231 et seq.**

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719. Chapter 52 of S.L. 1955 added what is codified as §§ 46-720 to 46-727 to S.L. 1953, Chapter 147, and the definitions in this section seemingly apply to those sections; but those sections are part of the Armory and Emergency Relief Facilities Act, defined in § 46-727.

**Effective Dates.**

Section 2 of S.L. 1989, ch. 34 declared an emergency. Approved March 20, 1989.

**§ 46-708. Administration.** — The adjutant general is hereby authorized to institute, establish and maintain a program of armory construction. The adjutant general shall constitute the sole agency of the state for the purpose of (1) making an inventory of existing armories, surveying the need for the construction of armories, and developing a program of armory construction as provided in this act, and (2) developing and administering a state plan for the construction of armories as provided in this act. Armory construction shall include construction of new facilities and expansion, rehabilitation or conversion of existing facilities.

**History.**

1953, ch. 147, § 3, p. 236.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in clauses (1) and (2) refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

**§ 46-709. General powers and duties.** — In carrying out the purposes of this act the adjutant general is authorized and directed:

(a) To require such reports, inspections and investigations, and prescribe such regulations as he deems necessary; (b) To provide such methods of administration, to appoint and hire such personnel and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder; to furnish progress reports, certificates of completion, and other documents, data, and evidence required by the federal act, or regulations thereunder, and perform such other acts as are necessary to acquire and utilize federal funds from the National Guard Bureau or other appropriate federal agencies for the purpose of this act.

(c) To procure in his discretion the temporary and intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for services basis and do not involve the performance of administrative duties; (d) To the extent that he considers desirable to effectuate the purposes of this act, to enter into agreements for the utilization of the facilities and services of other departments of the state, other public or private agencies and institutions, and any county, city, town or village.

(e) To accept on behalf of the state and to deliver to the state treasurer for deposit in the armory construction fund any grant, gift or contribution made to assist in meeting the costs of carrying out the purposes of this act as herein provided; to accept on behalf of the state any grant, gift, bequest or other conveyance of real property made to assist in the carrying out of the purposes of this act.

(f) To make a [an] annual report to the legislature on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the adjutant general considers appropriate to furnish adequate armory facilities for the Idaho National Guard.

### **History.**

1953, ch. 147, § 4, p. 236; am. 1976, ch. 9, § 5, p. 25.

## **STATUTORY NOTES**

### **Cross References.**

Armory construction fund, § 46-719.

Federal act, § 46-707 and notes thereto.

State treasurer, § 67-1201 et seq.

### **Compiler's Notes.**

The term “this act” throughout the section refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

The bracketed insertion in subsection (f) was added by the compiler to correct a grammatical error in the 1976 amendment of this section.

**§ 46-710. Advisory armory board of trustees. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1953, ch. 147, § 5, p. 236, was repealed by S.L. 1972, ch. 174, § 2, p. 434.



**§ 46-711. Survey and planning activities.** — The adjutant general is authorized and directed to make an inventory of existing armories, to survey the need for the construction of armories, and, on the basis of such inventory and survey, to develop a program for the construction of such armories as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate armories for the personnel of the Idaho National Guard.

**History.**

1953, ch. 147, § 6, p. 236.

**§ 46-712. Construction program.** — The construction program shall provide, in accordance with the regulations prescribed under the Federal Act, for adequate armory facilities for the Idaho National Guard and insofar as possible shall provide for their distribution throughout the state in such manner as to best serve the interests of the Idaho National Guard.

**History.**

1953, ch. 147, § 7, p. 236.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 46-707 and notes thereto.

**§ 46-713. Construction, expansion and rehabilitation of armories — Supervision by adjutant general.** — The adjutant general is authorized and empowered to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, expansion, rehabilitation or conversion of any and all armories as provided in this act, and the powers and duties vested in the adjutant general herein are expressly exempted from the provisions of sections 57-1101 through 57-1107, and [section 67-5711, Idaho Code](#). The adjutant general is also empowered to exercise the authorities set out in [section 67-5711B, Idaho Code](#), with respect to emergencies for armories.

**History.**

1953, ch. 147, § 8, p. 236; am. 1999, ch. 111, § 1, p. 339.

**STATUTORY NOTES**

**Cross References.**

Permanent building fund, § 57-1101 et seq.

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

**§ 46-714. Approval of board of examiners.** — Any contract with state matching funds in excess of the threshold amount specified for the requirement for formal bids in [section 67-5711, Idaho Code](#), may not be let by the adjutant general until written approval of the same shall be given by the board of examiners.

**History.**

1953, ch. 147, § 9, p. 236; am. 1999, ch. 109, § 1, p. 337; am. 2017, ch. 28, § 1, p. 50.

**STATUTORY NOTES**

**Cross References.**

State board of examiners, § 67-2001 et seq.

**Amendments.**

The 2017 amendment, by ch. 28, substituted “Any contract with state matching funds” for “No contract” at the beginning and substituted “may not be” for “may be” near the middle.

**§ 46-715. Application for federal funds for survey, planning and construction — Expenditure.** — The adjutant general is authorized to make application to the National Guard Bureau for federal funds to assist in carrying out the survey, planning and construction activities herein provided. If any such federal funds are delivered to the state for disbursement, such funds shall be delivered to the state treasurer and by him deposited in the armory construction fund hereinafter created. Such funds are hereby appropriated to the adjutant general for expenditure for carrying out the survey, planning and construction activities. Any federal funds received and not expended for such purposes shall be refunded to the treasury of the United States.

**History.**

1953, ch. 147, § 10, p. 236.

**STATUTORY NOTES**

**Cross References.**

Armory construction fund, § 46-719.

State treasurer, § 67-1201 et seq.

**§ 46-716. State plan.** — The adjutant general shall prepare and submit to the National Guard Bureau a state plan which shall include the armory construction program developed under this act and which shall provide for the establishment, administration and operation of armory construction activities in accordance with the requirements of the Federal Act and the regulations thereunder. The adjutant general shall from time to time review the armory construction program and submit to the National Guard Bureau any modification thereof which he may find necessary and may submit to the National Guard Bureau such modification of the state plan, not inconsistent with the requirements of the Federal Act, as he may deem advisable.

**History.**

1953, ch. 147, § 11, p. 236.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 46-707 and notes thereto.

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

**§ 46-717. Armory use, maintenance and operation.** — All armories constructed with the use of federal funds under the provisions of this act shall be the property of the state of Idaho, and the adjutant general shall by regulation prescribe minimum standards for their maintenance, operation, and use. The adjutant general is authorized to permit use of such armories by public and private persons and organizations under such leases or other agreements as he shall deem appropriate, provided such use does not interfere with their use for the administration and training of the Idaho National Guard or conflict with the provisions of the Federal Act and regulations thereunder; provided, that any armory constructed with the use of Federal funds under the provisions of the Armory and Emergency Relief Facilities Act shall be jointly owned by the state of Idaho and the city or village, city or village and county, and county participating thereunder.

**History.**

1953, ch. 147, § 12, p. 236; am. 1955, ch. 52, § 2, p. 73.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 46-707 and notes thereto.

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

The Armory and Emergency Relief Facilities Act, referred to near the end of this section, is compiled as §§ 46-720 to 46-727.

**Effective Dates.**

Section 3 of S.L. 1955, ch. 52 declared an emergency. Approved February 19, 1955.

**§ 46-718. Priority of projects.** — The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the Federal Act and provide for the construction, insofar as financial resources are available therefor and for maintenance and operations make possible, in the order of such relative need.

**History.**

1953, ch. 147, § 13, p. 236.

**STATUTORY NOTES**

**Cross References.**

Federal act, § 46-707 and notes thereto.



**§ 46-719. Armory construction fund.** — There is hereby created in the state treasury, a separate fund to be known as the “Armory Construction Fund,” and all such moneys as may hereafter come into said fund are hereby appropriated for armory construction projects and to carry out the purposes and objects of this act. All funds received from the federal government, if such funds are payable directly to the state, and all other funds received from any source to carry out the purposes and objects of this act, shall be delivered to the state treasurer and by him deposited in said “Armory Construction Fund.” All moneys paid into said “Armory Construction Fund,” including federal moneys and state moneys appropriated thereto, shall be used solely for the construction of new armory facilities or the expansion, rehabilitation or conversion of existing facilities as provided in this act, and such moneys shall be paid out upon warrants drawn by the state controller upon presentation of proper vouchers showing the adjutant general’s approval of such disbursements. Any appropriations made to the “Armory Construction Fund” are expressly exempted from the provisions of the Standard Appropriations Act of 1945, [sections 67-3601—67-3614, Idaho Code](#), from the provisions of [section 67-3509, Idaho Code](#), and from the provisions of [sections 67-3516—67-3523, Idaho Code](#).

**History.**

1953, ch. 147, § 14, p. 236; am. 1994, ch. 180, § 87, p. 420.

**STATUTORY NOTES**

**Cross References.**

Standard Appropriations Act of 1945, § 67-3601 et seq.

State treasurer, § 67-1201 et seq.

**Compiler’s Notes.**

The term “this act” in the first and second sentences refers to S.L. 1953, Chapter 147, which is compiled as §§ 46-706 to 46-709 and 46-711 to 46-719.

Sections 67-3522 and 67-3523, referred to in the spanned reference at the end of this section, “the provisions of sections 67-3516 to 67-3523,” have been repealed and section 67-3520 was repealed in 1995, with a new section 67-3520 enacted in 2003, reflecting different subject matter.

Section 15 of S.L. 1953, ch. 147 read: “If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.”

### **Effective Dates.**

Section 16 of S.L. 1953, ch. 147 declared an emergency. Approved March 10, 1953.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 87 of S.L. 1994, ch. 180 became effective January 2, 1995.

**§ 46-720. Agreements necessary to comply with United States statutes for construction of armories authorized.** — It is the sense of the legislature that the defense of the country and the general welfare of its people is the joint responsibility of the government of the United States and the several states thereof including the state of Idaho and its cities, villages and counties. In fulfilling this obligation and to promote volunteer organizations and to afford them effectual encouragement, it is necessary for the state of Idaho to provide the national guard with armories for training personnel and housing equipment. The state of Idaho desires to avail itself of the provisions of existing federal statutes, and any statutes that may be enacted hereafter relating to the construction of armories and to provide, in addition to military use, that such armories shall be available for use in event of emergencies or disasters and for community use. To permit cities and villages, cities or villages and counties, and counties to participate with the state of Idaho in the acquisition of armories and sites for armories, and to accomplish the purposes of this act, it is hereby found and declared necessary to authorize cities and villages, cities or villages and counties, and counties to levy taxes, to donate funds and property to the state of Idaho, and to enter into such agreements as may be necessary for the purpose of complying with the statutes of the United States relating to the construction of armories.

**History.**

1953, ch. 147, § 17, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the last sentence refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

**§ 46-721. Donations from funds of specified government units authorized for construction and maintenance of armories.** — Any city or village, city or village and county, and county may acquire, provide, and donate to the state of Idaho funds from its general fund and from its special fund created and established in section 46-722(c)[, Idaho Code], and property, for the construction, maintenance, repair, alteration, and rehabilitation of armories and armory sites as prescribed by the Armory Construction Act (chapter 147 of the Session Laws of 1953).

**History.**

1953, ch. 147, § 18, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

The Armory Construction Act, referred to at the end of this section, is compiled as §§ 46-706 to 46-719.

The words enclosed in parentheses so appeared in the law as enacted.

**§ 46-722. Acquisition of armory sites, agreements for federal assistance, special fund and tax levies authorized.** — To accomplish the purpose set forth in this act, the governing body of any city or village, or city or village and county, and the board of county commissioners may:

(a) Purchase, receive by donation, or otherwise acquire, real property for armory sites, and armories, and convey and transfer such sites and armories to the state of Idaho in joint ownership; purchase, receive by donation, lease or otherwise acquire, personal property for use in armories and to transfer the same to the state of Idaho in joint ownership.

(b) Enter into agreements on behalf of the city or village, city or village and county, and county with the adjutant general of the state of Idaho, the Department of Defense and the Departments of Army and Air Force, for the purpose of securing federal funds for the construction, maintenance, repair, alteration and rehabilitation of armories.

(c) Establish a special fund for the purposes of this act, levy a special tax for such purposes, but no levy for the purposes of this act shall exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property in such city or village, or city or village and county, and county.

### **History.**

1953, ch. 147, § 19, as added by 1955, ch. 52, § 1, p. 73; am. 1995, ch. 82, § 20, p. 218.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” in the introductory paragraph and in subsection (c) refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

**§ 46-723. Joint ownership of armory.** — Any armory constructed under this act wherein funds have been provided by a city or village, city or village and county, and county shall be jointly owned by the state and the participating city or village, city or village and county, and county; provided the participating city or village, city or village and county, and county contributes ten per cent (10%) or more of the actual construction cost, exclusive of the cost or market value of any real estate concerned.

**History.**

1953, ch. 147, § 20, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of this section refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

**§ 46-724. Armories constructed with use of federal funds regulated by adjutant general — Armory advisory committee.** — All armories constructed with the use of federal funds under the provisions of this act shall be under the control of the adjutant general who shall by regulation prescribe minimum standards for their maintenance, operation and use. The adjutant general is authorized to permit the use of such armories by public and private persons and organizations under such leases or other agreements as he shall deem appropriate, provided such use does not interfere with their use for the administration and training of the Idaho National Guard, or conflict with the provisions of the National Defense Facilities Act of 1950 and the regulations thereunder. To assist the adjutant general to accomplish these purposes, the adjutant general may appoint an Armory Advisory Committee, consisting of one (1) representative each from the participating city or village, or city or village and county, and county, one (1) representative from the office of the adjutant general, and one (1) representative from the national guard unit, or units, occupying the armory. The Armory Advisory Committee shall advise and consult with the adjutant general in the use of said armory and shall assist him in the promulgation and adoption of rules and regulations governing the use of said armory by public and private persons and organizations.

**History.**

1953, ch. 147, § 21, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Federal References.**

The National Defense Facilities Act of 1950, referred to in this section, was revised by Aug. 10, 1956, ch. 1041, § 1 and was again revised in 1994 by [P.L. 103-337](#). Present comparable sections may now be found at [10 U.S.C.S. § 18231 et seq.](#)

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

**§ 46-725. Availability of armory for emergency and disaster relief purposes.** — When the governor shall declare an emergency within any county which has an armory constructed under the provisions of this act, the governor may declare, subject to the provisions of the National Defense Facilities Act of 1950, that such armory be made available immediately to the board of county commissioners of such county for emergency and disaster relief purposes.

**History.**

1953, ch. 147, § 22, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Federal References.**

The National Defense Facilities Act of 1950, referred to in this section, was revised by Aug. 10, 1956, ch. 1041, § 1 and was again revised in 1994 by [P.L. 103-337](#). Present comparable sections may now be found at [10 U.S.C.S. § 18231 et seq.](#)

**Compiler's Notes.**

The term “this act” in this section refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.



**§ 46-726. Reversion of armory to specified government units when not required for national guard.** — Any jointly owned armory constructed under the provisions of this act and not required for the administration and training of the national guard shall revert to the control of the participating city or village, city or village and county, and county, subject to the provisions of the National Defense Facilities Act of 1950.

**History.**

1953, ch. 147, § 23, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Federal References.**

The National Defense Facilities Act of 1950, referred to in this section, was revised by Aug. 10, 1956, ch. 1041, § 1 and was again revised in 1994 by [P.L. 103-337](#). Present comparable sections may now be found at [10 U.S.C.S. § 18231 et seq.](#)

**Compiler's Notes.**

The term “this act” in this section refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

**§ 46-727. Title.** — This act shall be known as the “Armory and Emergency Relief Facilities Act.”

**History.**

1953, ch. 147, § 24, as added by 1955, ch. 52, § 1, p. 73.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in this section refers to S.L. 1955, Chapter 52, which is compiled as §§ 46-717 and 46-720 to 46-727.

Section 25 of S.L. 1953, ch. 147, as added by 1955, ch. 52, § 1 read: “If any provisions of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions of applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.”

**Effective Dates.**

Section 3 of S.L. 1955, ch. 52 declared an emergency. Approved February 19, 1955.



## Chapter 8

### MISCELLANEOUS AND GENERAL PROVISIONS

Sec.

46-801. State flag.

46-802. Unorganized associations prohibited — Parades prohibited — Exceptions.

46-803. Jurisdiction of courts and boards presumed.

46-804. Military division rules.

46-805. Youth challenge program.

46-806. Military division support fund.

46-807. Adjutant general's contingent fund — Appropriation — Allowance and payment of claims. [Repealed.]

**§ 46-801. State flag.** — A state flag for the state of Idaho is hereby adopted, the same to be as follows:

A silk flag, blue field, five (5) feet six (6) inches fly, and four (4) feet four (4) inches on pike, bordered with gilt fringe two and one-half (2 ½) inches in width, with state seal of Idaho twenty-one (21) inches in diameter, in colors, in the center of a blue field. The words “State of Idaho” are embroidered in with block letters, two (2) inches in height on a red band three (3) inches in width by twenty-nine (29) inches in length, the band being in gold and placed about eight and one-half (8 ½) inches from the lower border of fringe and parallel with the same.

**History.**

1927, ch. 261, § 12, p. 510; I.C.A., § 45-801.

**STATUTORY NOTES**

**Cross References.**

Military organizations not to carry other than national and state flags, Idaho [Const., Art. XIV, § 5](#).

**§ 46-802. Unorganized associations prohibited — Parades prohibited — Exceptions.** — No body of men, other than the regularly organized national guard, the unorganized militia when called into service of the state, or of the United States, and except such as are regularly recognized and provided for by the laws of the state of Idaho and of the United States, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state.

No city or town shall raise or appropriate any money toward arming or equipping, uniforming, or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States or members of the orders of Sons of Veterans, or of the Boy Scouts, may parade in public with firearms on Memorial Day or upon the reception of any regiment or companies of soldiers returning from such service, and for the purpose of escort duty at the burial of deceased soldiers; and students in educational institutions where military science is taught as a prescribed part of the course of instruction, may with the consent of the governor, drill and parade with firearms in public, under the superintendence of their teachers. This section shall not be construed to prevent any other organization authorized by law parading with firearms, nor to prevent parades by the national guard of any other state or territory.

**History.**

1927, ch. 261, § 79, p. 510; 1931, ch. 186, § 7, p. 310; I.C.A., § 45-802; am. 2002, ch. 146, § 1, p. 419.

**STATUTORY NOTES**

**Cross References.**

Cooperation of militia with civil authorities, § 46-604.

**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of state or local enactments regulating parades. 80 A.L.R.5th 255.

**§ 46-803. Jurisdiction of courts and boards presumed.** — The jurisdiction of the courts and board established by this act shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any case or proceeding.

**History.**

1927, ch. 261, § 81, p. 510; I.C.A., § 45-803.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in this section refers to S.L. 1927, Chapter 261, which is compiled throughout chapters 1 to 4 and 6 to 8 of this title.



**§ 46-804. Military division rules.** — The military division shall be authorized to promulgate, implement and enforce rules for the administration of the military division and to implement the requirements of this title. The adjutant general shall be responsible for the enforcement of all rules adopted by the military division. All rulemaking proceedings and hearings of the military division shall be governed by the provisions of chapter 52, title 67, Idaho Code.

**History.**

I.C., § 46-804, as added by 2008, ch. 125, § 1, p. 346.

**STATUTORY NOTES**

**Prior Laws.**

Former § 46-804, relating to the cost of bonds, which comprised S.L. 1927, ch. 261, § 88, p. 510; I.C.A., § 45-804; am. 1939, ch. 50, § 5, p. 91; am. 1950 (E.S.), ch. 24, § 7, p. 35, was repealed by S.L. 1978, ch. 54, § 7.

**§ 46-805. Youth challenge program. —**

(1)(a) There is hereby established the Idaho youth challenge program, a multi-phased youth intervention program. The program will provide, among other things, a structured, disciplined residential phase of at least twenty-two (22) weeks focusing on education and practical life skills and a post-residential phase of at least twelve (12) months involving skilled and trained mentors supporting graduates and engaged in positive and durable placement of graduates. The youth challenge program shall be focused on assisting participants in achieving a high school diploma or obtaining a general equivalency diploma (GED) and helping to ensure that participants become productive members of society.

(b) The program shall be eligible to receive and expend any moneys provided to the program including, but not limited to, private contributions, federal funds and state alternative school funding. In the event that moneys for any fiscal year are inadequate to fund the youth challenge program, the program shall be discontinued. The decision to discontinue the program due to inadequate funding shall be made by the legislature and the governor in a joint letter provided to the adjutant general and signed by the governor, the president pro tempore of the senate and the speaker of the house of representatives.

(2) The youth challenge program shall be administered by the state adjutant general in conjunction with:

(a) The board of trustees of an appropriate school district of this state; or

(b) A governing board, the members of which shall be appointed by the governor. The size of such governing board and qualifications and terms of board members shall be provided for in rule authorized by this section.

(3) The program and all program participants shall be governed by all applicable laws, regulations and guidelines including, but not limited to, [32 U.S.C. section 509](#).

(4)(a) In order to be eligible to participate in the program, applicants shall meet the criteria established by the adjutant general in administrative rule.

(b) Applicants shall be selected for the program by the youth challenge program board of admissions. Such board shall be appointed by the adjutant general. Qualifications for board membership, length of board terms, size of the board and other necessary provisions shall be established by the adjutant general in administrative rule.

(5) The adjutant general is authorized to enter into contracts and to promulgate rules to implement the provisions of this section.

(6) The school district where the youth challenge program is located may take steps to have the youth challenge program be considered and designated as an alternative school.

### **History.**

I.C., § 46-805, as added by 2011, ch. 322, § 1, p. 938; am. 2012, ch. 234, § 1, p. 651; am. 2015, ch. 302, § 4, p. 1182.

## **STATUTORY NOTES**

### **Cross References.**

Adjutant general, § 46-111.

### **Prior Laws.**

Former § 46-805, Attorney general as legal advisory of adjutant general, which comprised S.L. 1927, ch. 261, § 89, p. 510; I.C.A., § 45-805; am. 1972, ch. 174, § 3, p. 434, was repealed by S.L. 1975, ch. 147, § 3, p. 339.

### **Amendments.**

The 2012 amendment, by ch. 234, inserted “federal funds and state alternative secondary school funding” in paragraph (1)(b) and rewrote subsection (6), which formerly read: “The provisions of this section shall be null and void and of no force and effect on and after July 1, 2014.”

The 2015 amendment, by ch. 302, deleted “secondary” preceding “school” in the first sentence of paragraph (1)(b) and near the end of subsection (6).

### **Compiler’s Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2011, ch. 322, as amended by S.L. 2012, Chapter 234, provided “The provisions of this act shall be null, void and of no force and effect on and after July 1, 2015.” However, S.L. 2015, Chapter 22 repealed S.L. 2011, ch. 322, § 2 and S.L. 2012, chapter 234, § 2, effective July 1, 2015.

**Effective Dates.**

Section 2 of S.L. 2011, ch. 322 declares an emergency. Approved April 13, 2011.

Section 5 of S.L. 2015, ch. 302 provided that the act should take effect on and after July 1, 2016.

**§ 46-806. Military division support fund.** — (1) There is hereby created in the state treasury the military division support fund. Moneys in the fund shall be invested as provided in [section 67-1210, Idaho Code](#), and interest earned on investment of idle moneys in the fund shall be credited to the fund. Moneys in the fund shall be continually appropriated.

(2) The adjutant general, or his designee, is hereby authorized to also accept by devise, gift or otherwise and hold as trustee, for the benefit and use of the military division or any part thereof, any property, real or personal. The adjutant general, or his designee, shall be empowered to collect, receive and recover the rents, incomes and issues from the property; and to sell, divest, exchange or transact such property at fair market value; and to otherwise expend fund assets as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the military division.

(3) The board of examiners shall have oversight of this fund. The adjutant general shall provide a public annual report, due on the first day of July each year, to the board of examiners disclosing the financial status of the fund, listing all new gifts, bequests, donations and contributions during the prior year as well as all sales or disposals of properties or assets from the fund and every disbursement or other use of the fund.

(a) The board of examiners shall approve all gifts of real property before acceptance by the adjutant general.

(b) The board of examiners shall approve all gifts valued at two hundred fifty thousand dollars (\$250,000) or more before acceptance by the adjutant general.

(c) The adjutant general may, on his or her own initiative, request review and approval by the board of examiners for any other gift prior to acceptance.

(4) The adjutant general may assign military division employees to manage the operation of the fund; and the adjutant general shall request the office of the attorney general to prepare any legal documents required under the provisions of this section.

**History.**

I.C., § 46-806, as added by 2012, ch. 23, § 1, p. 77.

**STATUTORY NOTES****Cross References.**

Adjutant general, § 46-111.

Attorney general, § 67-1401 et seq.

Board of examiners, § 67-2001 et seq.

**Prior Laws.**

Former § 46-806, which comprised S.L. 1927, ch. 261, § 91, p. 510; I.C.A., § 45-806, was repealed by S.L. 1950 (E.S.), ch. 24, § 8, p. 39.

**§ 46-807. Adjutant general's contingent fund — Appropriation — Allowance and payment of claims. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1927, ch. 261, § 92, p. 510; I.C.A., § 45-807, was repealed by S.L. 1950 (E.S.), ch. 24, § 8, p. 39.





Chapter 9  
IDAHO NATIONAL GUARD TRUST FUND

Sec.

46-901 — 46-903. [Repealed.]

**§ 46-901 — 46-903. National guard trust fund. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1927, ch. 76, §§ 1 to 3, p. 95; I.C.A., §§ 46-901 to 46-903, were repealed by S. L. 1972, ch. 174, § 4, p. 434 and S.L. 1975, ch. 147, § 2, p. 339.



## Chapter 10

### STATE DISASTER PREPAREDNESS ACT

Sec.

46-1001. Short title.

46-1002. Definitions.

46-1003. Policy and purposes.

46-1004. Idaho office of emergency management created.

46-1005. Coordinating officer — Selection.

46-1005A. Disaster emergency account.

46-1006. Powers and duties of chief and office.

46-1007. Limitations.

46-1008. The governor and disaster emergencies.

46-1009. Local and intergovernmental disaster agencies and services.

46-1010. Intergovernmental arrangements.

46-1011. Local disaster emergencies.

46-1012. Compensation.

46-1013. Communications.

46-1014. Mutual aid.

46-1015. Weather modification.

46-1016. Liability for property damage, bodily injury or death.

46-1017. Immunity.

46-1018. Interstate mutual aid compact.

46-1018A. Emergency management assistance compact.

46-1019. Emergency response. [Repealed.]

46-1020. Purpose and findings.

46-1021. Definitions.

46-1022. Local governments may adopt floodplain zoning ordinances.

46-1023. Enforcement and sanctions.

46-1024. Severability.

46-1025. Federal funds to political subdivisions.

46-1026. Definitions.

46-1027. Military division — Idaho office of emergency management —  
Additional powers and duties.

**§ 46-1001. Short title.** — This act shall be cited as the “Idaho Disaster Preparedness Act of 1975, amended by the Idaho Homeland Security Act of 2004.”

**History.**

**I.C., § 46-1001** as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 3, p. 268.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 46-1001 to 46-1012, which comprised S.L. 1955, ch. 269, §§ 1 to 8, p. 653; **I.C., §§ 46-1010 to 46-1012** as added by 1963, ch. 302, §§ 1 to 3, p. 791; am. 1971, ch. 155, §§ 1 to 3, p. 758; am. 1974, ch. 22, §§ 12 to 16, p. 592, were repealed by S.L. 1975, ch. 212, § 1, p. 854 and the present material on the same subject substituted therefor.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1975, ch. 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

**CASE NOTES**

**Cited** **Union Pac. R.R. v. Idaho, 654 F. Supp. 1236 (D. Idaho 1987).**

**§ 46-1002. Definitions.** — As used in this act:

(1) “Adjutant general” means the administrative head of the military division of the office of the governor.

(2) “Disaster” means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action and including acts of terrorism.

(3) “Emergency” means occurrence or imminent threat of a disaster or condition threatening life or property that requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.

(4) “Political subdivision” means any county, city, district, or other unit of state or local government.

(5) “Militia” means all members of the Idaho army and air national guard in the service of the state.

(6) “Office” means the Idaho office of emergency management within the military division.

(7) “Search and rescue” means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

(8) “Disaster emergency account” means the account created under this act for the purpose of paying obligations and expenses incurred by the state of Idaho during a declared state of disaster emergency.

(9) “Bureau of hazardous materials” means the former bureau of hazardous materials, which is now a part of the Idaho office of emergency management in the military division of the office of the governor.

**History.**

**I.C., § 46-1002**, as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 320, § 1, p. 666; am. 1997, ch. 121, § 10, p. 357; am. 2004, ch. 58, § 4, p. 268; am. 2016, ch. 118, § 6, p. 331.

## **STATUTORY NOTES**

### **Cross References.**

Adjutant general, § 46-111.

Disaster emergency account, § 46-1005A.

Idaho office of emergency management, § 46-1004.

### **Prior Laws.**

Former § 46-1002 was repealed. See Prior Laws, § 46-1001.

### **Amendments.**

The 2016 amendment, by ch. 118, deleted former subsection (1), which read: “‘Bureau’ means the bureau of homeland security, military division of the office of the governor”; redesignated former subsections (2) through (6) as present subsections (1) through (5); added present subsection (6); and substituted “Idaho office of emergency management” for “bureau of homeland security” in subsection (9).

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

The term “this act” in subsection (8) refers to S.L. 1981, Chapter 320, which is compiled as §§ 46-1002, 46-1003, 46-1005A, and 46-1008. Probably, this reference should be to “this chapter,” being chapter 10, title 46, Idaho Code.



**§ 46-1003. Policy and purposes.** — It is the policy of this state to plan and prepare for disasters and emergencies resulting from natural or man-made causes, enemy attack, terrorism, sabotage or other hostile action, and to implement this policy, it is found necessary:

(1) To create an Idaho office of emergency management, to authorize the creation of local organizations for disaster preparedness in the political subdivisions of the state, and to authorize the state and political subdivisions to execute agreements and to cooperate with the federal government and the governments of other states.

(2) To prevent and reduce damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action.

(3) To prepare assistance for prompt and efficient search, rescue, care, and treatment of persons injured, victimized or threatened by disaster.

(4) To provide for rapid and orderly restoration and rehabilitation of persons and property affected by disasters.

(5) To prescribe the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to and recovery from disasters.

(6) To authorize and encourage cooperation in disaster prevention, preparedness, response and recovery.

(7) To provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by all state agencies, political subdivisions, and interstate, federal-state and Canadian activities in which the state and its political subdivisions may participate.

(8) To provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response.

(9) To provide for the payment of obligations and expenses incurred by the state of Idaho through the Idaho office of emergency management during a declared state of disaster emergency.

**History.**

I.C., § 46-1003, as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 320, § 2, p. 666; am. 2004, ch. 58, § 5, p. 268; am. 2016, ch. 118, § 7, p. 331.

**STATUTORY NOTES****Prior Laws.**

Former § 46-1003 was repealed. See Prior Laws, § 46-1001.

**Amendments.**

The 2016 amendment, by ch. 118, substituted “Idaho office of emergency management” for “bureau of homeland security” in subsections (1) and (9).

**OPINIONS OF ATTORNEY GENERAL****Emergency Plan.**

The responsibilities and authorities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency are defined in the intergovernmental disaster emergency plan, if any, agreed to by the city. Idaho Const., Art. XII, § 2, prohibits the county from unilaterally imposing its plan on an incorporated city. OAG 89-9.

**City Participation.**

Although § 46-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city’s limits, however, the city government has the responsibility to handle the situation. OAG 89-9.

Plans voluntarily entered into among the various political subdivisions are valid under the Idaho Disaster Preparedness Act of 1975. Because the cities voluntarily ratify the disaster emergency plans, Idaho Const., Art. XII, § 2 is not violated. OAG 89-9.

**§ 46-1004. Idaho office of emergency management created.** — Within the military division of the office of governor, an Idaho office of emergency management is established.

**History.**

**I.C., § 46-1004** as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 6, p. 268; am. 2016, ch. 118, § 8, p. 331.

**STATUTORY NOTES**

**Prior Laws.**

Former § 46-1004 was repealed. See Prior Laws, § 46-1001.

**Amendments.**

The 2016 amendment, by ch. 118, substituted “Idaho office of emergency management” for “bureau of homeland security” in the section heading and in the text of the section.

**§ 46-1005. Coordinating officer — Selection.** — The office may be headed by the adjutant general as chief of the military division, or by a coordinating officer selected by the adjutant general with the concurrence of the governor. If the adjutant general serves as chief of the office, he or she shall receive no additional compensation.

**History.**

I.C., § 46-1005, as added by 1975, ch. 212, § 2, p. 584; am. 2016, ch. 118, § 9, p. 331.

**STATUTORY NOTES**

**Cross References.**

Adjutant general, § 46-111.

**Prior Laws.**

Former § 46-1005 was repealed. See Prior Laws, § 46-1001.

**Amendments.**

The 2016 amendment, by ch. 118, rewrote the section heading and text, which formerly read: “**Chief of bureau — Appointment — Compensation.** The bureau may be headed by a chief appointed by the adjutant general with the concurrence of the governor or the governor may appoint the adjutant general to serve as chief. The chief shall hold office at the pleasure of the governor and his compensation shall be fixed by the governor. If the adjutant general is chief, he shall receive no additional compensation for serving as chief.”

**§ 46-1005A. Disaster emergency account.** — (1) There is hereby created and established in the state treasury a separate account to be known as the disaster emergency account which account shall be administered by the governor or his designee. The account shall only be used to pay obligations and expenses incurred by the state of Idaho during a declared state of disaster emergency.

(2) In order to pay said obligations and expenses in coping with a declared state of disaster emergency the governor shall expend state money as follows:

(a) The governor shall use any moneys available in the disaster emergency account.

(b) In the event the disaster emergency account is inadequate to satisfy said obligations and expenses, the governor is empowered to direct, by executive order, the state controller to transfer moneys from the general account [general fund], created pursuant to [section 67-1205, Idaho Code](#), to the disaster emergency account, provided that in the governor's judgment sufficient general account moneys will be available to support the full general account appropriations for the current fiscal year.

(c) In addition to any purpose for which they have previously been created, all funds excluding constitutionally created funds, or funds limited in their application by the constitution of the state of Idaho, are hereby expressly declared to be appropriated for the purpose of effectuating the purposes of this act. If the moneys made available in paragraphs (a) and (b) above are inadequate to meet the above mentioned obligations and expenses, the governor is empowered to direct the state controller, by executive order, to transfer to the disaster emergency account moneys from any eligible account in order to pay said obligations and expenses; provided, that in the governor's judgment, the moneys transferred are not required to support the current year's appropriation of the affected accounts.

(d) In the event that restitution is made to the state from nonstate sources to reimburse the state for costs incurred in responding to a state of

disaster emergency, the governor may use funds from the restitution to reimburse accounts from which funds were drawn to pay for the state's response to the emergency.

(3) In addition to any other purpose for which they might have been appropriated, all moneys made available by this act to be used in the event of a disaster emergency are hereby perpetually appropriated for the purpose set forth in this section according to the limitations established by this section and the constitution of the state of Idaho. In no event may the revenues made available by section 46-1005A (2)(b) and (c), Idaho Code, for any and all emergency purposes exceed, during any fiscal year, one percent (1%) of the annual appropriation of general account [general fund] moneys for that fiscal year.

### **History.**

**I.C., § 46-1005A**, as added by 1981, ch. 320, § 3, p. 666; am. 1988, ch. 279, § 1, p. 910; am. 1994, ch. 180, § 88, p. 420.

## **STATUTORY NOTES**

### **Cross References.**

State controller, § 67-1001 et seq.

### **Compiler's Notes.**

The term "this act" in paragraph (2)(c) and subsection (3) refers to S.L. 1981, Chapter 320, which is compiled as §§ 46-1002, 46-1003, 46-1005A and 46-1008.

The bracketed insertions in paragraph (2)(b) and in subsection (3) were added by the compiler to correct the name of the referenced fund. See § 67-1205.

### **Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was

adopted, the amendment to this section by § 88 of S.L. 1994, ch. 180 became effective January 2, 1995.

**§ 46-1006. Powers and duties of chief and office.** — (1) In all matters of disaster services, the adjutant general shall represent the governor and shall, on behalf of the governor, coordinate the activities of all of the state agencies in disaster services. The office shall have a coordinating officer and other professional, technical, secretarial and clerical employees necessary for the performance of its functions.

(2) The office shall prepare, maintain and update a state disaster plan based on the principle of self-help at each level of government. The plan may provide for:

- (a) Prevention and minimization of injury and damage caused by disaster;
- (b) Prompt and effective response to disaster;
- (c) Emergency relief;
- (d) Identification of areas particularly vulnerable to disasters;
- (e) Assistance to local officials in designing local emergency action plans;
- (f) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from disaster;
- (g) Preparation and distribution to the appropriate state and local officials of catalogs of federal, state and private assistance programs;
- (h) Assistance to local officials in designing plans for search, rescue, and recovery of persons lost, entrapped, victimized, or threatened by disaster;
- (i) Organization of manpower and chains of command;
- (j) Coordination of federal, state, and local disaster activities;
- (k) Coordination of the state disaster plan with the disaster plans of the federal government.

(3) The office shall participate in the development and revision of local and intergovernmental disaster plans. To this end, it may employ or



otherwise secure the services of professional and technical personnel to provide expert assistance to political subdivisions, their disaster agencies, and intergovernmental planning and disaster agencies. This personnel shall consult with subdivisions and agencies and shall make field examinations of the areas, circumstances, and conditions to which particular local and intergovernmental disaster plans are intended to apply.

(4) In preparing and maintaining the state disaster plan, the office shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and intergovernmental agencies, the office shall encourage them also to seek advice from these sources.

(5) The state disaster plan or any part thereof may be incorporated in rules of the office promulgated subject to chapter 52, title 67, Idaho Code.

(6) The office shall:

(a) Promulgate standards and criteria for local and intergovernmental disaster plans;

(b) Periodically review local and intergovernmental disaster plans;

(c) Assist political subdivisions, their disaster agencies, and intergovernmental disaster agencies to establish and operate training programs and programs of public information;

(d) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(e) Prepare executive orders and proclamations for issuance by the governor, as necessary or appropriate in coping with disasters;

(f) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery;

(g) Maintain a register of search and rescue organizations, units, teams, or individuals operating within the state;

- (h) Assist search and rescue units to accomplish standards for equipment, training and proficiency;
- (i) Coordinate search and rescue of lost aircraft and airmen pursuant to [section 21-114, Idaho Code](#), with aerial search operations coordinated by the Idaho transportation department, division of aeronautics;
- (j) In addition to disaster prevention measures as included in the state, local, and intergovernmental disaster plans, the office shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. The governor from time to time may make recommendations to the legislature, local governments and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters; and
- (k) Not limit the powers and duties of the department of transportation, division of aeronautics, as provided by sections 21-114 and 21-118, Idaho Code.

### **History.**

[I.C., § 46-1006](#), as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 7, p. 268; am. 2005, ch. 27, § 2, p. 133; am. 2016, ch. 118, § 10, p. 331.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 46-1006 was repealed. See Prior Laws, § 46-1001.

### **Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” in the section heading and throughout the section.

### **Compiler’s Notes.**

The term “this act” in paragraph (6)(f) refers to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

## **OPINIONS OF ATTORNEY GENERAL**

### **City's Responsibilities.**

The legislative mandate of the bureau of disaster services [now office of emergency management] is to oversee and coordinate, not to impose its plans on a city. The responsibility for planning for disaster emergencies within the municipal boundaries lies with the city. OAG 89-9.

**§ 46-1007. Limitations.** — Nothing in this act shall be construed to:

(1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety; (2) Interfere with dissemination of news or comment on public affairs; (3) Affect the jurisdiction or responsibilities of police forces, fire fighting forces, local emergency medical service (EMS) agencies licensed by the state department of health and welfare EMS bureau, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and intergovernmental disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or (4) Limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or statutes of this state independent of or in conjunction with any provisions of this act.

**History.**

I.C., § 46-1007, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 373, § 1, p. 1114.

**STATUTORY NOTES**

**Cross References.**

EMS bureau, § 56-1011 et seq.

Proclamation of martial law, § 46-602.

**Prior Laws.**

Former § 46-1007 was repealed. See Prior Laws, § 46-1001.

**Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-

1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**§ 46-1008. The governor and disaster emergencies.** — (1) Under this act, the governor may issue executive orders, proclamations and amend or rescind them. Executive orders and proclamations have the force and effect of law.

(2) A disaster emergency shall be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days or any part thereof. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the area subject to the proclamation, and the conditions which are causing the disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the Idaho office of emergency management, the office of the secretary of state and the office of the recorder of each county where the state of disaster emergency applies.

(3) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local and intergovernmental disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this act or any other provision of law relating to disaster emergencies.

(4) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the militia and may assume command of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(5) In addition to any other powers conferred upon the governor by law, he may:

(a) Suspend the provisions of any regulations prescribing the procedures for conduct of public business that would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) Utilize all resources of the state, including, but not limited to, those sums in the disaster emergency account as he shall deem necessary to pay obligations and expenses incurred during a declared state of disaster emergency;

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) Subject to any applicable requirements for compensation under [section 46-1012, Idaho Code](#), commandeer or utilize any private property, real or personal, if he finds this necessary to cope with the disaster emergency;

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives, and combustibles;

(i) Make provision for the availability and use of temporary emergency housing.

(6) Whenever an emergency or a disaster has been declared to exist in Idaho by the president under the provisions of the disaster relief act of 1974 (public law 93-288, [42 U.S.C. 5121](#)), as amended, the governor may:

(a) Enter into agreements with the federal government for the sharing of disaster recovery expenses involving public facilities;

(b) Require as a condition of state assistance that a local taxing district be responsible for paying forty percent (40%) of the nonfederal share of costs incurred by the local taxing district that have been determined to be eligible for reimbursement by the federal government, provided that the total local share of eligible costs for a taxing district shall not exceed ten percent (10%) of the taxing district's tax charges authorized by [section 63-802, Idaho Code](#);

(c) Obligate the state to pay the balance of the nonfederal share of eligible costs within local taxing entities qualifying for federal assistance; and

(d) Enter into agreements with the federal government for the sharing of disaster assistance expenses to include individual and family grant programs.

(7) During the continuance of any state of disaster emergency, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose restrictions on the lawful possession, transfer, sale, transport, storage, display or use of firearms or ammunition.

### **History.**

[I.C., § 46-1008](#), as added by 1975, ch. 212, § 2, p. 584; am. 1981, ch. 89, § 1, p. 123; am. 1981, ch. 320, § 4, p. 666; am. 1984, ch. 4, § 1, p. 7; am. 1996, ch. 208, § 11, p. ; am. 1996, ch. 322, § 45, p. 1029; am. 1997, ch. 117, § 7, p. 298; am. 2004, ch. 58, § 8, p. 268; am. 2006, ch. 264, § 1, p. 818; am. 2016, ch. 118, § 11, p. 331.

## **STATUTORY NOTES**

### **Cross References.**



Authority of governor during state of extreme emergency, § 46-601.

Idaho office of emergency management, § 46-1004.

Disaster emergency account, § 46-1005A.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 46-1008 was repealed. See Prior Laws, § 46-1001.

### **Amendments.**

The 2006 amendment, by ch. 264, in subsection (5)(h), deleted “firearms” preceding “explosives”; and added subsection (7).

The 2016 amendment, by ch. 118, substituted “Idaho office of emergency management” for “bureau of homeland security” near the end of subsection (2).

### **Compiler’s Notes.**

The term “this act” in subsections (1) and (3) refer to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

The reference enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 1981, ch. 89 declared an emergency. Approved March 23, 1981.

Section 5 of S.L. 1981, ch. 320 declared an emergency. Approved April 7, 1981.

Section 2 of S.L. 1984, ch. 4 declared an emergency. Approved February 21, 1984.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 to 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

### **CASE NOTES**

**Cited** *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003).

**§ 46-1009. Local and intergovernmental disaster agencies and services.** — (1) Each county within this state shall be within the jurisdiction of and served by the office and by a county or intergovernmental agency responsible for disaster preparedness and coordination of response.

(2) Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county, or shall have a liaison officer appointed by the county commissioners designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response and recovery.

(3) The chairman of the board of county commissioners of each county in the state shall notify the office of the manner in which the county is providing or securing disaster planning and emergency services. The chairman shall identify the person who heads the agency or acts in the capacity of liaison from which the service is obtained, and furnish additional information relating thereto as the office requires.

(4) Each county and/or intergovernmental agency shall prepare and keep current a local or intergovernmental disaster emergency plan for its area.

(5) The county or intergovernmental disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

### **History.**

**I.C., § 46-1009**, as added by 1975, ch. 212, § 2, p. 584; am. 2003, ch. 132, § 1, p. 385; am. 2004, ch. 373, § 2, p. 1114; am. 2005, ch. 27, § 3, p. 133; am. 2008, ch. 39, § 1, p. 93; am. 2016, ch. 118, § 12, p. 331.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 46-1009 was repealed. See Prior Laws, § 46-1001.

**Amendments.**

The 2008 amendment, by ch. 39, deleted subsections (6) through (10), which pertained to duties of the sheriff, search and rescue operations, and rescue of injured or entrapped persons, respectively.

The 2016 amendment, by ch. 118, substituted “office” for “bureau” throughout the section.

**Compiler’s Notes.**

The term “this act” in subsection (2) refers to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

**Effective Dates.**

Section 2 of S.L. 2003, ch. 132 declared an emergency. Approved March 27, 2003.

**OPINIONS OF ATTORNEY GENERAL****Emergency Plan.**

The responsibilities and authorities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency are defined in the intergovernmental disaster emergency plan, if any, agreed to by the city. Idaho [Const., Art. XII, § 2](#), prohibits the county from unilaterally imposing its plan on an incorporated city. OAG 89-9.

**City Participation.**

Although this section requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city’s limits, however, the city government has the responsibility to handle the situation. OAG 89-9.

Idaho Const., Art. XII, § 2, prohibits the sheriff or any other county official from interfering with a municipality. Therefore, the county commissioners and sheriff may not constitutionally take over the duties of the municipality in the event of a disaster emergency. OAG 89-9. (See 2008 amendment).

The Idaho Disaster Preparedness Act of 1975 only “encourages” the cities to plan for disaster emergencies; the legislature does not require the cities to plan. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

**§ 46-1010. Intergovernmental arrangements.** — (1) The governor may enter into interstate emergency or disaster service compacts with any state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency or disaster planning, prevention, response, and recovery.

(2) Nothing in subsection (1) hereof shall be construed to limit previous or future entry into the interstate civil defense and disaster compact of this state with other states.

(3) If any person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster proclaimed by the governor, and this state shall give due recognition to the license, certificate, or other permit.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and updated at intervals not to exceed four (4) years.

(5) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

(6) Pursuant to an interstate agreement, personnel working for the state, its political subdivisions, municipal or public corporations, and other public agencies, may work outside the state to aid in disaster and emergency relief work; or equipment belonging to the state, its political subdivisions, municipal or public corporations, and other public agencies may be used outside the state to aid in disaster and emergency relief work. When state or local highway equipment or personnel are used in disaster relief work outside the state, arrangements shall be made, as necessary, to reimburse the state, its political subdivisions, municipal or public corporations, and other public agencies, for such work or equipment to comply with [section 17, article 7 of the Idaho constitution](#), which provides that gasoline taxes and

motor vehicle funds shall be used exclusively for the public highways of the state.

**History.**

I.C., § 46-1010, as added by 1975, ch. 212, § 2, p. 584; am. 1986, ch. 107, § 1, p. 294.

**STATUTORY NOTES**

**Cross References.**

Emergency management assistance compact, § 46-1018A.

Interstate mutual aid compact, § 46-1018.

**Prior Laws.**

Former § 46-1010 was repealed. See Prior Laws, § 46-1001.

**OPINIONS OF ATTORNEY GENERAL**

**City Participation.**

The Idaho Disaster Preparedness Act of 1975 only “encourages” the cities to plan for disaster emergencies; the legislature does not require the cities to plan. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

**§ 46-1011. Local disaster emergencies.** — (1) A local disaster emergency may be declared only by a mayor or chairman of the county commissioners within their respective political subdivisions. It shall not be continued or renewed for a period in excess of seven (7) days except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the local county recorder.

(2) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or intergovernmental disaster emergency plans and to authorize the furnishing of aid and assistance thereunder.

(3) No intergovernmental agency or official thereof may declare a local disaster emergency, unless expressly authorized by the agreement pursuant to which the agency functions. However, an intergovernmental disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

#### **History.**

I.C., § 46-1011, as added by 1975, ch. 212, § 2, p. 584.

### **STATUTORY NOTES**

#### **Cross References.**

Availability of armory for emergency and disaster relief, § 46-725.

#### **Prior Laws.**

Former § 46-1011 was repealed. See Prior Laws, § 46-1001.

### **CASE NOTES**

**Cited** *Union Pac. R.R. v. Idaho*, 654 F. Supp. 1236 (D. Idaho 1987); *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003).



## **OPINIONS OF ATTORNEY GENERAL**

### **Emergency Plan.**

The responsibilities and authorities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency are defined in the intergovernmental disaster emergency plan, if any, agreed to by the city. Idaho [Const., Art. XII, § 2](#), prohibits the county from unilaterally imposing its plan on an incorporated city. OAG 89-9.

### **City Participation.**

Although § 46-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city's limits, however, the city government has the responsibility to handle the situation. OAG 89-9.

The Idaho Disaster Preparedness Act of 1975 only “encourages” the cities to plan for disaster emergencies; the legislature does not require the cities to plan. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

**§ 46-1012. Compensation.** — (1) Each person within this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state, other political subdivisions, and the public to successfully meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(2) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute or local law or ordinance.

(3) Compensation for property shall be only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or his representative.

(4) Any person claiming compensation for the use, damage, loss, or destruction of property under this act shall file a claim therefor with the office in the form and manner the office provides.

(5) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed upon between the claimant and the office, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

### **History.**

**I.C., § 46-1012**, as added by 1975, ch. 212, § 2, p. 584; am. 2016, ch. 118, § 13, p. 331.

## **STATUTORY NOTES**

## **Prior Laws.**

Former § 46-1012 was repealed. See Prior Laws, § 46-1001.

## **Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” in subsections (4) and (5).

## **Compiler’s Notes.**

The term “this act” in subsections (1) and (4) refer to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

## **CASE NOTES**

Compensation.

County immune.

Exhaustion of statutory remedy.

Scope of immunity.

**Compensation.**

This section 46-1012(3) is clear and unambiguous: compensation for property damaged, lost, or destroyed can be recovered only if its use or destruction was ordered by the governor or his representative; § 46-1017 is likewise clear and unambiguous, the statute, as written, does not limit the scope of immunity to damages compensable under § 46-1012. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**County Immune.**

Trial court did not err when it dismissed an equipment owner’s suit against a county for the loss of his front-end loader where the county was engaged in disaster relief activities, was acting under declaration of disaster

emergency, and complying with Idaho Disaster Preparedness Act, § 46-1001 et seq., despite the fact that the owner had not consented to its use. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

### **Exhaustion of Statutory Remedy.**

Owners of flooded farmland were not required to exhaust the remedy provided by this section, since the governor's declaration of an emergency did not refer to the use or destruction of landowners' property nor did the governor designate any of the governmental agencies involved in the emergency actions as his personal representative. *Marty v. State*, 117 Idaho 133, 786 P.2d 524 (1989).

### **Scope of Immunity.**

Section 46-1017 did not limit the scope of immunity to damages compensable under this section. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

**§ 46-1013. Communications.** — The office shall ascertain what means exist for rapid and efficient communications in times of disaster emergencies. The office shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunications or other communication system or network. The office shall make recommendations to the governor as appropriate.

**History.**

I.C., § 46-1013, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 9, p. 268; am. 2016, ch. 118, § 14, p. 331.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” throughout the section.

**§ 46-1014. Mutual aid.** — (1) Political subdivisions not participating in the intergovernmental arrangements pursuant to this act nevertheless shall be encouraged and assisted by the office to conclude suitable arrangement for furnishing mutual aid in coping with disasters. The arrangements shall include provisions of aid by persons and units in public employ.

(2) In passing upon local disaster plans, the office shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

### **History.**

I.C., § 46-1014, as added by 1975, ch. 212, § 2, p. 584; am. 2016, ch. 118, § 15, p. 331.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” throughout the section.

### **Compiler’s Notes.**

The term “this act” in subsection (1) refers to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

## **OPINIONS OF ATTORNEY GENERAL**

### **Emergency Plans.**

Although § 46-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city’s limits,

however, the city government has the responsibility to handle the situation. OAG 89-9.

**City Participation.**

The Idaho Disaster Preparedness Act of 1975 only “encourages” the cities to plan for disaster emergencies; the legislature does not require the cities to plan. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

**§ 46-1015. Weather modification.** — The office shall keep continuously appraised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the office determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall direct the officer or agency empowered to issue permits for weather modification operations to suspend the issuance of the permits. Thereupon, no permits may be issued until the office informs the officer or agency that the danger has passed.

**History.**

I.C., § 46-1015, as added by 1975, ch. 212, § 2, p. 584; am. 2016, ch. 118, § 16, p. 331.

**STATUTORY NOTES**

**Cross References.**

Weather modification districts, § 22-4301.

**Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” throughout the section.



**§ 46-1016. Liability for property damage, bodily injury or death. —**

No person, partnership, corporation, association, the state of Idaho or any political subdivision thereof or other entity who owns, leases, controls, occupies or maintains any building or premises which shall have been designated by proper authority for civil defense as a shelter from destructive operations or attacks by enemies of the United States shall be liable to any person for property damages, bodily injury or death resulting from or caused by the condition of said building or premises or as a result of any act or omission or in any way arising from the designation of such premises or buildings as a shelter when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for acts of wilful negligence by the owner or occupant of such building or premises or other person responsible for the maintenance thereof, or by his servants, agents or employees.

**History.**

I.C., § 46-1016, as added by 1975, ch. 212, § 2, p. 584.

**§ 46-1017. Immunity.** — Neither the state, nor the office, nor any political subdivision thereof nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them engaged in any civil defense, disaster or emergency and the planning or preparation for the same, or disaster or emergency relief activities, acting under proper authority, nor, except in cases of willful misconduct or gross negligence, any person, firm, corporation or entity under contract with them to provide equipment or work to be used in civil defense, disaster or emergency planning, preparation or relief, while complying with or attempting to comply with this act or any rule or regulation promulgated pursuant to the provisions of the act, shall be liable for the death of or any injury to persons or damage to property as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act or under the worker's compensation law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

**History.**

**I.C., § 46-1017**, as added by 1975, ch. 212, § 2, p. 584; am. 2004, ch. 58, § 10, p. 268; am. 2016, ch. 118, § 17, p. 331.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 118, substituted “office” for “bureau” near the beginning of the section.

**Compiler's Notes.**

The terms “this act” and “the act” in this section refer to S.L. 1975, Chapter 212, which is compiled as §§ 46-1001 to 46-1005 and 46-1006 to 46-1017, as amended by S.L. 2004, Chapter 58, which is compiled as § 39-7103, 39-7104, 46-1001 to 46-1004, 46-1006, 46-1008, 46-1013, 46-1017, and 46-1025. Probably, the reference should read “this chapter,” being chapter 10, title 46, Idaho Code.

## **Effective Dates.**

Section 3 of S.L. 1975, ch. 212 declared an emergency. Approved March 28, 1975.

## **CASE NOTES**

Compensation.

County immune.

Disaster relief efforts.

Limitations on immunity.

Public necessity.

Requirements.

### **Compensation.**

This section does not limit the scope of immunity to damages compensable under § 46-1012. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

If this section grants immunity from liability to a governmental entity regarding a particular loss, then compensation for inverse condemnation cannot be awarded under Idaho Const., Art. I, § 14. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

### **County Immune.**

Trial court did not err when it dismissed an equipment owner's suit against a county for the loss of his front-end loader where the county was engaged in disaster relief activities, was acting under declaration of disaster emergency, and complying with Idaho Disaster Preparedness Act, § 46-1001 et seq., despite the fact that the owner had not consented to its use. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

### **Disaster Relief Efforts.**

Fire fighting is precisely the type of activity that this section was intended to cover, and, as such, the statute provides immunity to those state agencies involved in disaster relief efforts. This includes the Idaho National Guard. The fact that the statute does not refer to the National Guard specifically is of no consequence; the statute does not name any specific agencies or organizations but lists only broad categories such as the “state,” “any political subdivision thereof,” “other agencies” and their “agents, employees or representatives.” *Baca v. State*, 119 Idaho 782, 810 P.2d 720 (1991).

### **Limitations on Immunity.**

Scope of immunity granted to a governmental agency by this section is not limited to particular theories of tort liability. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

### **Public Necessity.**

This section was intended by the legislature to codify a version of the doctrine of public necessity; the statute provides that no political subdivision of the state, engaged in any disaster relief activities, acting under a declaration by proper authority while complying or attempting to comply with this act, shall be liable for damage to property as a result of such activity. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

### **Requirements.**

In a suit by owners of flooded farmland for inverse condemnation compensation, actions of governmental agencies were immunized only if they took place during the period of declared emergency by the county commissioners or the governor. *Marty v. State*, 117 Idaho 133, 786 P.2d 524 (1989).

**Cited** *Union Pac. R.R. v. Idaho*, 654 F. Supp. 1236 (D. Idaho 1987).

**§ 46-1018. Interstate mutual aid compact.** — The state of Idaho hereby enacts into law and enters into the interstate mutual aid compact with those states who agree and enact the interstate mutual aid compact in accordance with the terms of the compact, which compact is substantially as follows:

## INTERSTATE MUTUAL AID COMPACT

### Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

### Article II

**Article I, Section 10, of the Constitution of the United States** permits a state to enter into an agreement or compact with another state, subject to the consent of Congress. Congress, through enactment of **50 U.S.C. 2281(g)** and **2283** and the executive branch, by issuance of Executive Order No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

### Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or

other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

#### Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

#### Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal or public corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other states with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing of this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two (2) or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two (2) states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

## **History.**

I.C., § 46-1018, as added by 1986, ch. 107, § 2, p. 294.

## STATUTORY NOTES

### **Federal References.**

50 U.S.C. 2281 and 2283, referred to in Article II, were repealed by Act Oct. 5, 1994, P.L. 103-337. For present comparable provisions, see 42 USCS § 5196a.

### **Compiler's Notes.**

As of the end of 2019, Montana and Idaho were the only states to adopt the interstate mutual aid compact.

### **Effective Dates.**

Section 3 of S.L. 1986, ch. 107 declared an emergency. Approved March 22, 1986.



**§ 46-1018A. Emergency management assistance compact.** — The legislature of the state of Idaho hereby authorizes the governor of the state of Idaho to enter into a compact on behalf of the state of Idaho with any other state legally joining therein, in the form substantially as follows:

## EMERGENCY MANAGEMENT ASSISTANCE COMPACT

### ARTICLE I

#### PURPOSES AND AUTHORITIES

(1) This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

(2) The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(3) This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states’ national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement between states.

### ARTICLE II

#### GENERAL IMPLEMENTATION

(1) Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other

emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(2) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

(3) On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

### ARTICLE III

#### PARTY STATE RESPONSIBILITIES

(1) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(a) Review individual state hazards analysis [analyses] and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack.

(b) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(c) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(d) Assist in warning communities adjacent to or crossing the state boundaries.

(e) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(f) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(g) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty (30) days of the verbal request. Requests shall provide the following information:

(a) A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(b) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(c) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(3) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

## ARTICLE IV

### LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the states [state] in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency service authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training of [for] mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

## ARTICLE V

### LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

## ARTICLE VI

### LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

## ARTICLE VII

### SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two (2) or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

## ARTICLE VIII

### COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

## ARTICLE IX

### REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the

provisions [provision] of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

## ARTICLE X

### EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

## ARTICLE XI

### IMPLEMENTATION

(1) This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter this compact shall become effective as to any other state upon its enactment by such state.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty (30) days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(3) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

## ARTICLE XII

### VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

## ARTICLE XIII

### ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under [section 1385 of title 18, United States Code](#).

### **History.**

[I.C., § 46-1018A](#), as added by 2001, ch. 140, § 1, p. 501.

## STATUTORY NOTES

### **Compiler's Notes.**

The bracketed insertions in Articles III, IV, and IX were added by the compiler to correct the enacting legislation.

For further information on the emergency management assistance compact, see *<https://www.emacweb.org>*.

The emergency management assistance compact has been adopted by the United States Congress and by all 50 states.



**§ 46-1019. Emergency response. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 46-1019**, as added by 1997, ch. 121, § 11, p. 357; am. 2000, ch. 442, § 1, p. 1402; am. 2000, ch. 469, § 106, p. 1450; am. 2001, ch. 103, § 86, p. 253, was repealed by S.L. 2004, ch. 58, § 11.

**§ 46-1020. Purpose and findings.** — (1) The legislature of the state of Idaho finds:

(a) That recurring floods in Idaho threaten human life, health and property and that the public interest requires that the floodplains of Idaho be managed and regulated in order to minimize flood hazards to life, health and property.

(b) That it is the policy of this state to reduce flood damage and the number of people and structures at risk in flood hazard areas through proper floodplain management, including such measures as floodplain zoning ordinances which require structures to be built at a flood protection elevation and/or with floodproofing.

(c) That local units of government have the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish this proper floodplain management. Furthermore, they are best able to adopt and implement comprehensive floodplain management programs that include nonregulatory techniques to accomplish the purposes of this act in cooperation with federal, state and local agencies.

(2) The purpose of this act is:

(a) To protect human life, health and property; (b) To preserve floodplains for the purpose of carrying and storing flood waters; (c) To reduce the public cost of providing emergency services, flood control structures and rebuilding public works damaged by floods; (d) To protect the tax base and jobs in Idaho; (e) To reduce the threat of increased damage to existing development; (f) To encourage the orderly development and wise use of floodplains; (g) To minimize interruptions to business; (h) To prevent increased flooding and erosion caused by improper development.

### **History.**

**I.C., § 46-1020**, as added by 1998, ch. 301, § 1, p. 992.

### **STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1998, Chapter 301, which is compiled as §§ 46-1020 to 46-1024.

**§ 46-1021. Definitions.** — As used in this act:

(1) “Development” means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures, or the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of mobile homes; mining, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of materials; specifically including the construction of dikes, berms and levees. The term “development” does not include the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

(2) “Flood” means a general or temporary condition of partial or complete inundation of normally dry land areas caused by the overflow or rise of rivers, streams or lakes, or the unusual and rapid accumulation or runoff of surface waters from any source.

(3) “Flood fringe” is that portion of the floodplain outside of the floodway covered by floodwaters during the regulatory flood.

(4) “Floodplain” is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of the regulatory flood. The riverine floodplain includes the floodway and the flood fringe.

(5) “Floodplain management” is the analysis and integration of the entire range of measures that can be used to prevent, reduce or mitigate flood damage in a given location, and that can protect and preserve the natural, environmental, historical, and cultural values of the floodplain.

(6) “Floodproofing” means the modifications of structures, their sites, building contents and water and sanitary facilities, to keep water out or reduce the effects of water entry.

(7) “Flood protection elevation” means an elevation that shall correspond to the elevation of the one percent (1%) chance flood (one hundred (100)

year flood) plus any increased flood elevation due to floodway encroachment, plus any required freeboard.

(8) “Floodway” is the channel of the river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.

(9) “Freeboard” represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard shall compensate for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(10) “Local government,” in the context of this chapter, means any county or city having planning and zoning authority to regulate land use within its jurisdiction.

(11) “Mitigation” means any action taken which will reduce the impact, damage or cost of the next flood that occurs.

(12) “Person” means any individual, group of individuals, corporation, partnership, association, political subdivision, public or private agency or entity.

(13) “Regulatory flood” is a flood determined to be representative of large floods known to have occurred in Idaho and which may be expected to occur on a particular stream because of like physical characteristics. The regulatory flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed. In inland areas, the flood frequency of the regulatory flood is once in every one hundred (100) years; this means that in any given year there is a one percent (1%) chance that a regulatory flood may occur or be exceeded.

## **History.**

**I.C., § 46-1021**, as added by 1998, ch. 301, § 1, p. 992; am. 2010, ch. 141, § 1, p. 298; am. 2014, ch. 72, § 5, p. 183.

## **STATUTORY NOTES**

### **Amendments.**

The 2010 amendment, by ch. 141, added the last sentence in subsection (1).

The 2014 amendment, by ch. 72, deleted “ocean” preceding “streams or lakes” in subsection (2).

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1998, Chapter 301, which is compiled as §§ 46-1020 to 46-1024.

**§ 46-1022. Local governments may adopt floodplain zoning ordinances.** — Subject to the availability of adequate mapping and data to properly identify the floodplains, if any, within its jurisdiction, each local government is encouraged to adopt a floodplain map and floodplain management ordinance which identifies these floodplains and which requires, at a minimum, that any development in a floodplain must be constructed at a flood protection elevation and/or have adequate floodproofing. The local government may regulate all mapped and unmapped floodplains within its jurisdiction. Nothing in this act shall prohibit a local government from adopting more restrictive standards than those contained in this chapter. Floodplain zoning ordinances shall not regulate the operation, cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations. If not otherwise exempt from approval, a flood control district's conduct of a "flood fight," as defined in [section 42-3103, Idaho Code](#), shall not require prior local government approval provided all such approvals are obtained within a reasonable time after the imminent flooding event has ended.

#### **History.**

[I.C., § 46-1022](#), as added by 1998, ch. 301, § 1, p. 992; am. 2010, ch. 141, § 2, p. 298; am. 2014, ch. 72, § 6, p. 183.

### **STATUTORY NOTES**

#### **Amendments.**

The 2010 amendment, by ch. 141, added the last sentence.

The 2014 amendment, by ch. 72, added the last sentence.

#### **Compiler's Notes.**

The term "this act" in the third sentence refers to S.L. 1998, Chapter 301, which is compiled as §§ 46-1020 to 46-1024.

**§ 46-1023. Enforcement and sanctions.** — (1) Development constructed or maintained in violation of any local floodplain management ordinance that conforms to the provisions of this chapter is hereby declared to be a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action of the state, any local unit of government of the state or any citizen thereof.

(2) If, after the effective date of this chapter, a local government allows any development in a floodplain below the flood protection elevation without adequate floodproofing, that development shall not, in the event of a disaster emergency involving flooding in that floodplain, be eligible to receive any matching funds from the state for any federal disaster assistance program which may be available as a result of said flooding in that floodplain. The owner of the development will be required to rely on flood insurance to insure their property against the risk of loss incurred by their development in the floodplain in contravention of the intent of this chapter.

**History.**

I.C., § 46-1023, as added by 1998, ch. 301, § 1, p. 992.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this chapter” near the beginning of subsection (2) refers to the effective date of S.L. 1998, Chapter 301, which was effective July 1, 1998.



**§ 46-1024. Severability.** — If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

**History.**

I.C., § 46-1024, as added by 1998, ch. 301, § 1, p. 992.

**§ 46-1025. Federal funds to political subdivisions.** — (1) Annually, the chief of the Idaho office of emergency management shall prepare a written summary of all grants received from the federal emergency management agency to be distributed to the forty-four (44) county commission chairmen. The summary shall list those federal funds that are eligible for direct assistance to local disaster agencies in accordance with [section 46-1009\(2\), Idaho Code](#), and those funds that are limited to use by the state and not eligible for direct assistance to local disaster agencies.

(2) Not less than thirty-four percent (34%) of the eligible direct assistance funds shall be subgranted by the Idaho office of emergency management to the local disaster agencies. Funds shall be distributed to the local disaster agencies subject to the provisions and rules of the Idaho office of emergency management, the federal emergency management agency through the Robert T. Stafford Act, title 44 of the code of federal regulations, and pertinent circulars published by the United States office of management and budget.

(3) Direct financial assistance to the local disaster agencies is not an entitlement. Subgrants are awarded through the Idaho office of emergency management for the purpose of assisting counties to achieve goals and objectives outlined in an approved county grant proposal.

#### **History.**

[I.C., § 46-1025](#), as added by 2000, ch. 442, § 2, p. 1402; am. 2004, ch. 58, § 12, p. 268; am. 2016, ch. 118, § 18, p. 331.

### **STATUTORY NOTES**

#### **Cross References.**

Idaho office of emergency management, § 46-1004.

#### **Amendments.**

The 2016 amendment, by ch. 118, substituted “office of emergency management” for “bureau of homeland security” throughout the section.

**Federal References.**

The Robert T. Stafford disaster relief and emergency assistance act, referred to in subsection (2), is compiled as **42 USCS § 5121 et seq.**

**Compiler's Notes.**

For further information on the federal emergency management agency, referred to in subsection (2), see *<https://www.fema.gov>*.

For further information on the United States office of management and budget, referred to in subsection (2), see *<https://www.whitehouse.gov/>*.

**§ 46-1026. Definitions.** — As used in this section and [section 46-1027, Idaho Code](#), the following terms shall have the following meanings:

(1) “Idaho technical rescue (ITR) teams” means a specialized team or group of teams formed pursuant to this section and [section 46-1027, Idaho Code](#), organized with capabilities established under the federal emergency management agency national resource typing system in order to assist in the removal of trapped victims in emergency situations including, but not limited to, collapsed structures, confined spaces, trench excavations, elevated locations and other technical rescue situations.

(2) “Specialty rescue team (SRT)” means a specialized team, formed pursuant to this section and [section 46-1027, Idaho Code](#), organized to provide technical rescue assistance to supplement and work under first responders and local incident commanders including, but not limited to, cave rescue, mine and tunnel rescue and vehicle/machinery extrication and swift water/flood teams. Such teams shall be aligned with one (1) or more of the categories within the federal emergency management agency’s national resource typing system.

(3) “Idaho incident management and support teams (IIMAST)” means a type 3 incident management team, which is a multiagency/multijurisdiction team for extended incidents, formed and managed at the state, regional or metropolitan level deployed as a team of trained personnel to manage major and/or complex incidents requiring a significant number of local, regional and state resources and incidents that extend into multiple operational periods and require a written incident action plan (IAP) that may be utilized at all hazard type incidents. These teams may initially manage larger, more complex incidents prior to arrival of and transition to a type 2 or type 1 incident management team (IMT) under the direction of the agency having the jurisdiction.

(4) “Person” shall have the definition ascribed to it in [section 46-1021, Idaho Code](#).

### **History.**

[I.C., § 46-1026](#), as added by 2010, ch. 179, § 2, p. 367.

## STATUTORY NOTES

### **Legislative Intent.**

Section 1 of S.L. 2010, ch. 179, provided “Legislative Intent. It is the intent of the Legislature to recognize Idaho technical rescue teams, specialty rescue teams, and Idaho incident management and support teams to provide resources that would be unavailable to most communities in Idaho. These teams are local resources that would be available to the state under a disaster declaration. Furthermore, it is the intent of the Legislature that these teams are to work under the authority of the agency having jurisdiction over the area where a response incident occurs. The creation of these teams assists the state in meeting the Federal Emergency Management Agency’s strategic goals for disaster preparedness.”

### **Compiler’s Notes.**

For further information on resource typing by the federal emergency management agency, referred to in subsection (2), see *<https://www.fema.gov/resource-management-mutual-aid>*.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 4 of S.L. 2010, ch. 179, declared an emergency. Approved March 31, 2010.

**§ 46-1027. Military division — Idaho office of emergency management — Additional powers and duties.** — (1) The military division through the Idaho office of emergency management shall implement the provisions of this section and [section 46-1026, Idaho Code](#), and in so doing, the military division may:

(a) Through the Idaho office of emergency management, in accordance with the laws of the state, hire, fix the compensation and prescribe the powers and duties of such other individuals including consultants, emergency teams and committees as may be necessary to carry out the provisions of this section and [section 46-1026, Idaho Code](#).

(b) Identify and implement ITR and specialty rescue teams that have appropriately trained personnel and necessary equipment to respond to technical rescue incidents and emergency disaster events. The military division shall enter into a written joint exercise of powers agreement with each entity or person providing equipment or services to a designated ITR or specialty rescue team. The teams shall be available and may respond to technical rescue incidents at the direction of the military division or its designee. When responding solely at the direction of the local incident commander, no cost recovery from the state of Idaho shall be available to ITR teams.

(c) Identify and implement an Idaho incident management and support team (IIMAST) that has appropriately trained personnel to the type 3 level and necessary equipment to respond to all hazard incidents. The military division shall enter into a joint exercise of powers agreement with each entity or person providing equipment or services to a designated IIMAST member. The teams shall be available and may respond to all hazard incidents at the direction of the military division or its designee. When responding solely at the direction of the local incident commander, no cost recovery from the state of Idaho shall be available to IIMAST teams.

(d) Contract with persons to meet state emergency response needs for the teams and response authorities.

(e) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with technical, rescue and all hazard incident disasters.

(f) Encourage, participate in or conduct studies, investigations, training, research and demonstrations for and with Idaho technical rescue (ITR) teams, specialty rescue teams (SRT), Idaho incident management and support teams (IIMAST), local emergency response authorities and other interested persons.

(g) Collect and disseminate information relating to emergency response to technical rescue related events and all hazards incident disasters.

(h) Accept and administer loans, grants or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this section and [section 46-1026, Idaho Code](#).

(i) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to technical rescue related events and disasters.

(2) The military division through the Idaho office of emergency management shall have authority to promulgate rules and provide procedures to:

(a) Govern reimbursement of claims pursuant to this section when a disaster has been declared pursuant to chapter 10, title 46, Idaho Code.

(b) Provide for credentialing of Idaho technical rescue (ITR) teams, specialty rescue teams (SRT), and Idaho incident management and support teams (IIMAST) and for the identification and operation of all teams established pursuant to this section and [section 46-1026, Idaho Code](#), and in accordance with the national incident management system, the national response framework and nationally recognized standards.

(c) Establish a credentialing program to review and evaluate new and existing local and regional technical rescue capabilities and provide recommendations for capability enhancement in accordance with the national incident management system, the national response framework and nationally recognized standards.

(3) Consistent with the provisions of subsections (4) and (5) of this section, the state of Idaho shall be liable for the acts or omissions of the Idaho technical rescue (ITR), specialty rescue teams (SRT) and Idaho incident management and support (IIMAST) teams responding to a technical rescue or all hazard incidents as a management team and the designating or requesting city or county shall be liable for the acts or omissions of a local emergency response authority responding to a technical rescue incident within its jurisdiction.

(4) Notwithstanding any other provision of law to the contrary, any Idaho technical rescue (ITR) team, speciality rescue team (SRT), Idaho incident management and support team (IIMAST), local emergency response authority or other person or group of persons who respond to a technical rescue incident or all hazard incidents as a management team at the request of an incident commander shall not be subject to civil liability for assistance or advice, except as provided in subsection (5) of this section.

(5) The exemption from civil liability provided in this section shall not apply to an act or omission that caused, in whole or in part, such technical rescue or all hazard incident management response to a person who may otherwise be liable therefor or any person who has acted in a grossly negligent, reckless or intentional manner.

(6) Nothing in this section shall be construed to abrogate the immunity granted to governmental entities pursuant to chapter 9, title 6, Idaho Code.

#### **History.**

I.C., § 46-1027, as added by 2010, ch. 179, § 3, p. 367; am. 2016, ch. 118, § 19, p. 331.

### **STATUTORY NOTES**

#### **Amendments.**

The 2016 amendment, by ch. 118, substituted “Idaho office of emergency management” for “bureau of homeland security” throughout the section; and substituted “national response framework” for “national response plan” in paragraphs (2)(b) and (2)(c).

#### **Legislative Intent.**



Section 1 of S.L. 2010, ch. 179, provided “Legislative Intent. It is the intent of the Legislature to recognize Idaho technical rescue teams, specialty rescue teams, and Idaho incident management and support teams to provide resources that would be unavailable to most communities in Idaho. These teams are local resources that would be available to the state under a disaster declaration. Furthermore, it is the intent of the Legislature that these teams are to work under the authority of the agency having jurisdiction over the area where a response incident occurs. The creation of these teams assists the state in meeting the Federal Emergency Management Agency’s strategic goals for disaster preparedness.”

**Compiler’s Notes.**

For further information on the national incident management system, referred to in paragraphs (2)(b) and (2)(c), see <https://www.fema.gov/national-incident-management-system>.

For further information on the national response framework, referred to in paragraphs (2)(b) and (2)(c), see <https://www.gsa.gov/governmentwide-initiatives/emergency-response/the-national-response-framework>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 4 of S.L. 2010, ch. 179, declared an emergency. Approved March 31, 2010.



## Chapter 11

### IDAHO CODE OF MILITARY JUSTICE

Sec.

46-1101. Short title.

46-1102. Model State Code of Military Justice.

46-1103. Arrest.

46-1104. Regulatory authority.

46-1105. Immunity.

46-1106. Severability.

**§ 46-1101. Short title.** — This act may be cited and referred to as the “Idaho Code of Military Justice.”

### **History.**

**I.C., § 46-1101**, as added by 2015, ch. 268, § 2, p. 1078.

## **STATUTORY NOTES**

### **Prior Laws.**

Former chapter 11 of Title 46, which comprised the following sections, were repealed by S.L. 2015, ch. 268, § 1, effective July 1, 2014

46-1101. Short title. [**I.C., § 46-1101** as added by 1975, ch. 147, § 4, p. 339.]

46-1102. Definitions. [**I.C., § 46-1103**, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 1, p. 190; am. and redesign. 1998, ch. 176, § 1, p. 624.]

46-1103. Persons subject to the code. [**I.C., § 46-1104**, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 2, p. 190; am. and redesign. 1998, ch. 176, § 2, p. 624; am. 2011, ch. 52, § 1, p. 116.]

46-1104. Application of code — All places within state — Persons serving outside the state — When jurisdiction attaches — Venue. [**I.C., § 46-1105**, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 3, p. 190; am. and redesign. 1998, ch. 176, § 3, p. 624.]

46-1105. Jurisdiction to try persons who fraudulently obtained discharge. [**I.C., § 46-1106** as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 4, p. 624.]

46-1106. Concurrent jurisdiction of civil courts, military commissions, boards, or other military tribunals. [**I.C., § 46-1107**, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 4, p. 190; am. and redesign. 1998, ch. 176, § 5, p. 624.]

46-1107. Commanding officer’s nonjudicial punishment. [**I.C., § 46-1108**, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 5, p. 190;

am. and redesign. 1998, ch. 176, § 6, p. 624; am. 2001, ch. 153, § 1, p. 553.]

46-1108. Arrest. [I.C., § 46-1109, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 7, p. 624; am. 1999, ch. 110, § 1, p. 338; am. 2001, ch. 153, § 2, p. 553.]

46-1109. Types of courts-martial. [I.C., § 46-1110, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 6, p. 190; am. and redesign. 1998, ch. 176, § 8, p. 624.]

46-1110. Jurisdiction of general courts-martial. [I.C., § 46-1111, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 7, p. 190; am. and redesign. 1998, ch. 176, § 9, p. 624.]

46-1111. Jurisdiction of special courts-martial. [I.C., § 46-1112, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 8, p. 190; am. and redesign. 1998, ch. 176, § 10, p. 624.]

46-1112. Convening of general and special courts-martial. [I.C., § 46-1113, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 9, p. 190; am. and redesign. 1998, ch. 176, § 11, p. 624.]

46-1113. Composition of courts-martial. [I.C., § 46-1114, as added by 1984, ch. 92, § 11, p. 190; am. and redesign. 1998, ch. 176, § 12, p. 624.]

46-1114. Military judges. [I.C., § 46-1115, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 12, p. 190; am. and redesign. 1998, ch. 176, § 13, p. 624.]

46-1115. Detail of trial counsel and defense counsel. [I.C., § 46-1116, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 13, p. 190; am. and redesign. 1998, ch. 176, § 14, p. 624.]

46-1116. Detail or employment of reporters and interpreters. [I.C., § 46-1117, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 14, p. 190; am. and redesign. 1998, ch. 176, § 15, p. 624.]

46-1117. Absent and additional members. [I.C., § 46-1118, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 15, p. 190; am. and redesign. 1998, ch. 176, § 16, p. 624.]

46-1118. Preferral of charges. [I.C., § 46-1119, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 16, p. 190; am. and redesign. 1998, ch.

176, § 17, p. 624.]

46-1119. Compulsory self-incrimination prohibited. [I.C., § 46-1120, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 17, p. 190; am. and redesign. 1998, ch. 176, § 18, p. 624.]

46-1120. Investigation. [I.C., § 46-1121, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 18, p. 190; am. and redesign. 1998, ch. 176, § 19, p. 624.]

46-1121. Forwarding of charges for general court-martial. [I.C., § 46-1122, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 19, p. 190; am. and redesign. 1998, ch. 176, § 20, p. 624.]

46-1122. Reference for trial — Changing the charge to conform to evidence or correct defects. [I.C., § 46-1123, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 20, p. 190; am. and redesign. 1998, ch. 176, § 21, p. 624.]

46-1123. Service of charges. [I.C., § 46-1124, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 21, p. 190; am. and redesign. 1998, ch. 176, § 22, p. 624.]

46-1124. Rules of procedure and evidence. [I.C., § 46-1125, as added by 1984, ch. 92, § 23, p. 190; am. and redesign. 1998, ch. 176, § 23, p. 624; am. 2001, ch. 153, § 3, p. 553.]

46-1125. Unlawfully influencing action of court. [I.C., § 46-1126, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 24, p. 190; am. and redesign. 1998, ch. 176, § 24, p. 624.]

46-1126. Duties of trial counsel and defense counsel. [I.C., § 46-1127, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 25, p. 190; am. and redesign. 1998, ch. 176, § 25, p. 624.]

46-1127. Sessions. [I.C., § 46-1128, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 26, p. 190; am. and redesign. 1998, ch. 176, § 26, p. 624.]

46-1128. Continuances. [I.C., § 46-1129, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 27, p. 190; am. and redesign. 1998, ch. 176, § 27, p. 624.]

46-1129. Challenges. [I.C., § 46-1130, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 28, p. 190; am. and redesign. 1998, ch. 176, § 28, p. 624.]

46-1130. Oaths. [I.C., § 46-1131, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 29, p. 190; am. and redesign. 1998, ch. 176, § 29, p. 624.]

46-1131. Statute of limitations. [I.C., § 46-1132, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 30, p. 190; am. and redesign. 1998, ch. 176, § 30, p. 624.]

46-1132. Former jeopardy. [I.C., § 46-1133, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 31, p. 190; am. and redesign. 1998, ch. 176, § 31, p. 624.]

46-1133. Pleas of accused. [I.C., § 46-1134, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 32, p. 190; am. and redesign. 1998, ch. 176, § 32, p. 624.]

46-1134. Discovery. [I.C., § 46-1135, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 33, p. 190; am. and redesign. 1998, ch. 176, § 33, p. 624.]

46-1135. Opportunity to obtain witnesses and other evidence. [I.C., § 46-1136, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 34, p. 190; am. and redesign. 1998, ch. 176, § 34, p. 624.]

46-1136. Process — Mandates — Subpoenas duces tecum — Attachment of witnesses and books and records — Form — Execution — Service without charge. [I.C., § 46-1137, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 35, p. 190; am. and redesign. 1998, ch. 176, § 35, p. 624.]

46-1137. Contempts. [I.C., § 46-1140, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1984, ch. 92, § 36, p. 190; am. and redesign. 1998, ch. 176, § 36, p. 624.]

46-1138. Depositions. [I.C., § 46-1139, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 37, p. 190; am. and redesign. 1998, ch. 176, § 37, p. 624.]

46-1139. Voting and rulings. [I.C., § 46-1141, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 39, p. 190; am. and redesign. 1998, ch. 176, § 38, p. 624.]

46-1140. Number of votes required. [I.C., § 46-1142, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 40, p. 190; am. and redesign. 1998, ch. 176, § 39, p. 624.]

46-1141. Court to announce action. [I.C., § 46-1143, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 40, p. 624.]

46-1142. Record of trial. [I.C., § 46-1144, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 41, p. 190; am. and redesign. 1998, ch. 176, § 41, p. 624.]

46-1143. Dishonorable discharge, bad conduct discharge or dismissal — Procedure. [I.C., § 46-1145, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 42, p. 190; am. and redesign. 1998, ch. 176, § 42, p. 624.]

46-1144. Effective date of sentences. [I.C., § 46-1148, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 44, p. 190; am. and redesign. 1998, ch. 176, § 43, p. 624.]

46-1145. Review of record by staff judge advocate — Appeal. [I.C., § 46-1154, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 46, p. 190; am. and redesign. 1998, ch. 176, § 44, p. 624.]

46-1146. Prejudicial error. [I.C., § 46-1155, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 45, p. 624.]

46-1147. Petition for new trial — Newly discovered evidence — Fraud. [I.C., § 46-1158, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 48, p. 190; am. and redesign. 1998, ch. 176, § 46, p. 624.]

46-1148. Unexecuted sentence — Remission — Suspension. [I.C., § 46-1159, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 49, p. 190; am. and redesign. 1998, ch. 176, § 47, p. 624.]

46-1149. Restoration. [I.C., § 46-1160, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 50, p. 190; am. and redesign. 1998, ch. 176, § 48, p. 624.]

46-1150. Offenses subject to court-martial — Resolution of conflict with civil courts. [I.C., § 46-1162, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 49, p. 624.]



46-1151. Principal. [I.C., § 46-1163, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 50, p. 624.]

46-1152. Accessory after the fact. [I.C., § 46-1164, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 51, p. 624.]

46-1153. Included offenses — Attempt. [I.C., § 46-1165, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 52, p. 624.]

46-1154. Perjury. [I.C., § 46-1166, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 53, p. 624.]

46-1155. Fraudulent enlistment — Appointment — Separation. [I.C., § 46-1167, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 54, p. 624.]

46-1156. Effecting unlawful enlistment — Appointment — Separation. [I.C., § 46-1168, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 55, p. 624.]

46-1157. Disrespectful behavior to a superior officer, warrant officer or noncommissioned officer. [I.C., § 46-1169, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 56, p. 624.]

46-1158. Assaulting or willfully disobeying superior officer, warrant officer or noncommissioned officer. [I.C., § 46-1170, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 57, p. 624.]

46-1159. Cruelty, oppression or maltreatment of subordinates. [I.C., § 46-1171, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 58, p. 624.]

46-1160. False record or document. [I.C., § 46-1172, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 59, p. 624.]

46-1161. Sale — Neglect — Damage of military property. [I.C., § 46-1173, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 60, p. 624.]

46-1162. Unauthorized, drunk or reckless operation of a military vehicle or aircraft. [I.C., § 46-1174, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 61, p. 624.]

46-1163. Drunk on duty. [I.C., § 46-1175, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 62, p. 624.]

46-1164. Mutiny. [I.C., § 46-1176, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 63, p. 624.]

46-1165. Failure to obey orders — Dereliction in duty.

46-1166. Absence without leave. [I.C., § 46-1177, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 52, p. 190; am. and redesign. 1998, ch. 176, § 64, p. 624.]

46-1167. Missing movement. [I.C., § 46-1179, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 66, p. 624.]

46-1168. Desertion. [I.C., § 46-1180, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 67, p. 624.]

46-1169. Feigning illness, disablement, mental lapse or derangement — Self-injury. [I.C., § 46-1181, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 68, p. 624.]

46-1170. Drunk or asleep at post — Leaving post before regular relief. [I.C., § 46-1182, as added by 1975, ch. 147, § 4, p. 339; am. and redesign. 1998, ch. 176, § 69, p. 624.]

46-1171. Public property — Captured or abandoned property — Private disposal for profit — Looting. [I.C., § 46-1184, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 53, p. 190; am. and redesign. 1998, ch. 176, § 70, p. 624.]

46-1172. Conspiracy. [I.C., § 46-1172, as added by 1998, ch. 176, § 71, p. 624.]

46-1173. Solicitation. [I.C., § 46-1173, as added by 1998, ch. 176, § 72, p. 624.]

46-1174. Resistance, breach of arrest, and escape. [I.C., § 46-1174, as added by 1998, ch. 176, § 73, p. 624.]

46-1175. Releasing prisoner without proper authority. [I.C., § 46-1175, as added by 1998, ch. 176, § 74, p. 624.]

46-1176. Unlawful detention. [I.C., § 46-1176, as added by 1998, ch. 176, § 75, p. 624.]

46-1177. Wrongful use, possession, etc., of controlled substances. [I.C., § 46-1177, as added by 1998, ch. 176, § 76, p. 624.]

46-1178. Frauds against the government. [I.C., § 46-1178, as added by 1998, ch. 176, § 77, p. 624.]

46-1179. Aiding the enemy. [I.C., § 46-1179, as added by 1998, ch. 176, § 78, p. 624.]

46-1180. Conduct unbecoming an officer. [I.C., § 46-1180, as added by 1998, ch. 176, § 79, p. 624.]

46-1181. General article. [I.C., § 46-1181, as added by 1998, ch. 176, § 80, p. 624.]

46-1182. Trial of civil-type offenses by military members in event of prolonged statewide suspension of civil courts. [I.C., § 46-1187, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 55, p. 190; am. and redesisg. 1998, ch. 176, § 81, p. 624.]

46-1183. Administration of oaths — Affidavits. [I.C., § 46-1191, as added by 1975, ch. 147, § 4, p. 339; am. 1984, ch. 92, § 57, p. 190; am. and redesisg. 1998, ch. 176, § 82, p. 624.]

46-1184. Fines — Payment into state general fund. [I.C., § 46-1192, as added by 1975, ch. 147, § 4, p. 339; am. and redesisg. 1998, ch. 176, § 83, p. 624.]

46-1185. Regulatory authority. [I.C., § 46-1193, as added by 1984, ch. 92, § 59, p. 190; am. and redesisg. 1998, ch. 176, § 84, p. 624.]

46-1186. Immunity. [I.C., § 46-1186, as added by 1998, ch. 176, § 85, p. 624.]

46-1187. Severability. [I.C., § 46-1187, as added by 1998, ch. 176, § 87, p. 624.]

46-1188 to 46-1190. Courts of inquiry — Complaints — State judge advocate. [Repealed by S.L. 1984, ch. 92, § 46.]

46-1191 to 46-1193 was amended and redesignated as §§ 46-1183 to 46-1185, by S.L. 1998, ch. 176, §§ 82 to 84.

46-1194. Repealed by S.L. 1998, ch. 176, § 86, effective July 1, 1998.

**Compiler's Notes.**

The term “this act” refers to S.L. 2015, Chapter 268, which is codified as § 46-1101 et seq. The reference probably should be to “this chapter,” being chapter 11, title 46, Idaho Code.

S.L. 2015, ch. 244, §§ 28 and 29 purported to amend former §§ 46-1110 and 46-1178; however, S.L. 2015, ch. 268, § 1 repealed former chapter 11 of title 46, effective July 1, 2015.

**§ 46-1102. Model State Code of Military Justice.** — The “Model State Code of Military Justice” is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

## MODEL STATE CODE OF MILITARY JUSTICE

### PART I. GENERAL PROVISIONS

#### ARTICLE 1. DEFINITIONS — GENDER NEUTRALITY

(a) In this act, unless the context otherwise requires:

(1) The term “cadet,” “candidate,” or “midshipman” means a person who is enrolled in or attending the United States military academy, the United States air force academy, the United States coast guard academy, officer candidate school, a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces;

(2) The term “duty status other than state active duty” means any other type of duty not in federal service and not full-time duty in the active service of the state, under an order issued by authority of law and includes travel to and from such duty;

(3) The term “judge advocate” means a commissioned officer of the organized state military forces who is a member in good standing of the bar of the highest court of a state and is:

(A) Certified or designated as a judge advocate in the judge advocate general’s corps of the army, air force, navy, or the marine corps or designated as a law specialist as an officer of the coast guard, or a reserve component of one of these; or

(B) Certified as a nonfederally recognized judge advocate, under regulations promulgated pursuant to this provision, by the senior judge advocate of the commander of the force in the state military forces of which the accused is a member, as competent to perform such military justice duties required by this code. If there is no such judge advocate available, then such certification may be made by such senior judge

advocate of the commander of another force in the state military forces, as the convening authority directs;

(4) “State” means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands;

(5) “State active duty” means full-time duty in the state military forces under an order of the governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from such duty;

(6) “Senior force judge advocate” means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander’s chief legal advisor;

(7) “State military forces” means the national guard of the state of Idaho, as defined in title 32, United States Code, the organized naval militia of the state, and any other military force organized under the constitution and laws of the state of Idaho, not to include the unorganized militia, when not in a status subjecting them to exclusive jurisdiction under 10 U.S.C. chapter 47. The unorganized militia, state defense force, state national guard, home guard or any other name of any state force that does not meet this definition shall not be part of the “state military forces” under this code;

(8) “Senior force commander” means the commander of the same force of the state military forces as the accused;

(9) “Commanding officer” means only commissioned officers;

(10) “Superior commissioned officer” means a commissioned officer superior in rank, grade, or command;

(11) “Military” means any or all of the state military forces;

(12) “Accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused;

(13) “Military judge” means an official of a general or special court-martial detailed in accordance with article 26;

(14) “Legal officer” means any commissioned officer designated as a judge advocate to perform legal duties for a command;

(15) “Record,” when used in connection with the proceedings of a court-martial, means:

(A) An official written transcript, written summary, or other writing relating to the proceedings; or

(B) An official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced;

(16) “Classified information” means:

(A) Any information or material that has been determined by an official of the United States pursuant to law, an executive order, or regulation to require protection against unauthorized disclosure for reasons of national security; and

(B) Any restricted data, as defined in section 11(y) of the atomic energy act of 1954, [42 U.S.C. 2014\(y\)](#);

(17) “National security” means the national defense and foreign relations of the United States;

(18) “Military offenses” means those offenses prescribed under articles 77 through 117, 123, 124a, 124b, and 131b through 134.

(b) The use of the masculine gender throughout this code shall also include the feminine gender.

## ARTICLE 2. PERSONS SUBJECT TO THIS CODE — JURISDICTION

(a) This code applies to all members of the state military forces when serving in a title 32 status or state active duty status as defined in article 1(a) (5) of this code. This code does not apply to members serving in a title 10 status or members of the unorganized militia as defined in [section 46-102, Idaho Code](#).

(b) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force, regardless of duty status. Courts-martial convened by the governor or his designated representative have primary jurisdiction of military offenses as

defined in article 1(a)(18) of this code. A proper civilian court has primary jurisdiction of a nonmilitary offense when an act or omission violates both this code and local criminal law, foreign or domestic. In such a case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense.

### ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

(a) Subject to article 43, a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to article 43, subject to trial by court-martial on that charge and is, after apprehension, subject to this chapter while in the custody of the state military forces for that trial. Upon conviction of that charge, he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of the state military forces who is subject to this chapter is not, by virtue of the termination of a period of active duty for training or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

### ARTICLE 4. DISMISSED OFFICER'S RIGHT TO TRIAL BY COURT-MARTIAL

(a) If any commissioned officer, dismissed by order of the governor or his designated representative, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the governor or his designated representative, as soon as practicable, shall



convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, the adjutant general shall substitute for the dismissal ordered by the governor or his designated representative a form of discharge authorized for administrative issue.

(b) If the governor or his designated representative fails to convene a general court-martial within six (6) months from the presentation of an application for trial under this article, the adjutant general shall substitute for the dismissal ordered by the governor or his designated representative a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the governor or his designated representative alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor or his designated representative, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the governor or his designated representative may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the governor or his designated representative, he has no right to trial under this article.

## ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

(a) This code has applicability at all times and in all places subject to the personal jurisdiction as provided in article 2 of this code, or, if not in a duty status, that there is a nexus between the act or omission constituting the offense and the efficient functioning of the state military forces; however, this grant of military jurisdiction shall neither preclude nor limit civilian

jurisdiction over an offense, which is limited only by the prohibition of double jeopardy.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

#### ARTICLE 6. JUDGE ADVOCATES AND LEGAL OFFICERS

(a) The senior force judge advocates in each of the state's military forces or that judge advocate's delegates shall make frequent inspections in the field in supervision of the administration of military justice in that force.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice. The staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the state judge advocate.

(c)(1) No person who, with respect to a case, serves in a capacity specified in paragraph (2) of this subsection, may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.

(2) The capacities referred to in paragraph (1) of this subsection are, with respect to the case involved, any of the following:

(A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge; or

(B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.

#### ARTICLE 6a. INVESTIGATION AND DISPOSITION OF MATTERS PERTAINING TO THE FITNESS OF MILITARY JUDGES

(a) The governor or his designee shall prescribe procedures for the investigation and disposition of charges, allegations, or information

pertaining to the fitness of a military appellate judge, military judge, or military magistrate to perform the duties of the position involved.

(b) The governor or his designee shall transmit a copy of the procedures prescribed pursuant to this article to the appropriate committees of the Idaho senate and Idaho house of representatives.

#### ARTICLE 6b. RIGHTS OF THE VICTIM OF AN OFFENSE UNDER THIS CODE

(a) A victim of an offense under this code has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused;

(B) A preliminary hearing under article 32 relating to the offense;

(C) A court-martial relating to the offense;

(D) A public proceeding of the service clemency and parole board relating to the offense; and

(E) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) of this subsection unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard at any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused;

(B) A sentencing hearing relating to the offense; and

(C) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the government at any proceeding described in paragraph (2) of this subsection.

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this code.

(b) In this article, “victim of an offense under this code” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this code.

(c) In the case of a victim of an offense under this code who is under eighteen (18) years of age but who is not a member of the state military forces, incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this article.

(d) Enforcement by the Idaho state courts:

(1) If the victim of an offense under this chapter believes that an article 32 preliminary hearing ruling or a court-martial ruling violates the rights of the victim afforded by the provisions of this article, including provisions specified in subsection (a)(4) of this article, the victim may petition the Idaho state courts in accordance with the applicable rules of procedure of the Idaho state courts for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the provisions of this article.

(2) Paragraph (1) of this subsection applies with respect to the protections afforded by the following:

(A) The provisions of this article;

(B) Military rule of evidence 513, relating to the psychotherapist-patient privilege;

(C) Military rule of evidence 514, relating to the victim advocate-victim privilege; and

(D) Military rule of evidence 615, relating to the exclusion of witnesses.

(e) Upon notice by counsel for the government to counsel for the accused of the name of an alleged victim of an offense under this article who counsel for the government intends to call as a witness at a proceeding under this article, counsel for the accused shall make any request to interview the victim through the special victims' counsel or other counsel for the victim, if applicable.

(f) If requested by an alleged victim who is subject to a request for interview under subsection (e) of this article, any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the government, a counsel for the victim, or, if applicable, a victim advocate.

## PART II. APPREHENSION AND RESTRAINT

### ARTICLE 7. APPREHENSION

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this code or by 10 U.S.C. chapter 47, or by regulations issued under either, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer or civil officer having authority to apprehend offenders under the laws of the United States or of a state, including, but not limited to, [section 46-1103, Idaho Code](#), may do so upon probable cause that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

(d) If an offender is apprehended outside the state, the offender's return to the area must be in accordance with normal extradition procedures or by reciprocal agreement.

(e) No person authorized by this article to apprehend persons subject to this code or the place where such offender is confined, restrained, held, or

otherwise housed may require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law.

#### ARTICLE 8. APPREHENSION OF DESERTERS

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver him into the custody of those forces.

#### ARTICLE 9. IMPOSITION OF RESTRAINT

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this code or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) This article does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

#### ARTICLE 10. RESTRAINT OF PERSONS CHARGED

(a) In general.

(1) Subject to paragraph (2) of this subsection, any person subject to this chapter who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require.

(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

(b) Notification to accused and related procedures.

(1) When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken:

(A) To inform the person of the specific offense of which the person is accused; and

(B) To try the person or to dismiss the charges and release the person.

(2) To facilitate compliance with paragraph (1) of this subsection, the governor or his designee shall prescribe regulations setting forth procedures relating to referral for trial, including procedures for prompt forwarding of the charges and specifications and, if applicable, the preliminary hearing report submitted under article 32.

#### ARTICLE 11. PLACE OF CONFINEMENT — REPORTS AND RECEIVING OF PRISONERS

(a) If a person subject to this code is confined before, during, or after trial, confinement shall be in a civilian or military confinement facility.

(b) No person authorized to receive prisoners pursuant to subsection (a) of this article may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a statement, signed by such officer, of the offense charged against the prisoner, unless otherwise authorized by law.

(c) Every person authorized to receive prisoners pursuant to subsection (a) of this article to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

## ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

No member of the state military forces may be placed in military confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces. This article shall not apply to confinement of state military forces in civilian confinement facilities.

## ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

No person, while being held for trial or awaiting a verdict, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances required to ensure the person's presence.

## ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

(a) A person subject to this code accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial or confinement.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to the place of original custody for the completion of the person's sentence.

## PART III. NONJUDICIAL PUNISHMENT

### ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

(a) Under such regulations as prescribed, any commanding officer (and for purposes of this article, officers-in-charge) may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this article. The governor, the adjutant general, or an officer of a general or flag rank in command may delegate the powers under this article to a principal assistant who is a member of the state military forces.



(b) Any commanding officer may impose upon enlisted members of the officer's command:

- (1) An admonition;
- (2) A reprimand;
- (3) The withholding of privileges for not more than six (6) months;
- (4) The forfeiture of pay of not more than seven (7) days' pay;
- (5) A fine of not more than seven (7) days' pay;
- (6) A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
- (7) Extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; and
- (8) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

(c) Any commanding officer of the grade of major or lieutenant commander, or above, may impose upon enlisted members of the officer's command:

- (1) Any punishment authorized in subsection (b)(1), (2) and (3) of this article;
- (2) The forfeiture of not more than one-half ( $\frac{1}{2}$ ) of one (1) month's pay per month for two (2) months;
- (3) A fine of not more than one (1) month's pay;
- (4) A reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;
- (5) Extra duties, including fatigue or other duties, for not more than forty-five (45) days, which need not be consecutive; and

(6) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days, which need not be consecutive.

(d) The governor, the adjutant general, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose:

(1) Upon officers of the officer's command:

(A) Any punishment authorized in subsection (c)(1), (2), (3) and (6) of this article; and

(B) Arrest in quarters for not more than thirty (30) days, which need not be consecutive.

(2) Upon enlisted members of the officer's command:

(A) Any punishment authorized in subsection (c) of this article.

(e) Whenever any of those punishments are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under this article.

(f) Except in the case of a member attached to or embarked in a vessel, punishment under this article may not be imposed on any member under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

(g) The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. The officer also may:

(1) Mitigate reduction in grade to forfeiture of pay;

(2) Mitigate arrest in quarters to restriction; or

(3) Mitigate extra duties to restriction.

The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(h) A person punished under this article who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority within fifteen (15) days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (g) of this article by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(i) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(j) Whenever a punishment of forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

(k) Regulations may prescribe the form of records to be kept of proceedings under this article and may prescribe that certain categories of those proceedings shall be in writing.

#### PART IV. COURT-MARTIAL JURISDICTION

#### ARTICLE 16. COURTS-MARTIAL CLASSIFIED

The three (3) kinds of courts-martial in the state military forces are:

(1) General courts-martial, consisting of:

(A) A military judge and not less than five (5) members; or

(B) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) Special courts-martial, consisting of:

(A) A military judge and not less than three (3) members; or

(B) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in subsection (1)

(B) of this article so requests; and

(3) Summary courts-martial, consisting of one (1) commissioned officer.

#### ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are subject to this code. Additionally, the army and air national guard state military forces have court-martial jurisdiction over all members subject to this code.

#### ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

Subject to article 17 of this code, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any punishment not forbidden by this code.

#### ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

Subject to article 17 of this code, special courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dishonorable discharge, dismissal, confinement for more than one (1) year, forfeiture of pay exceeding two-thirds (2/3) pay per month, or forfeiture of pay for more than one (1) year.

#### ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

(a) Subject to article 17 of this code, summary courts-martial have jurisdiction to try persons subject to this code, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this code under such limitations as the governor may prescribe.

(b) No person in the rank of E-7 or above may be brought to trial before a summary court-martial if that person objects thereto. If objection to trial by summary court-martial is made by an accused in the rank of E-7 or above, trial by special or general court-martial may be ordered, as may be appropriate. Members in the rank of E-6 and below do not have the right to reject trial before a summary court-martial. Summary courts-martial may, under such limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month, restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds (2/3) of one (1) month's pay.

(c) A summary court-martial is a noncriminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

## ARTICLE 21. RESERVED

### PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

## ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

(a) General courts-martial may be convened by:

- (1) The governor;
- (2) The adjutant general;
- (3) The commanding officer of a force of the state military forces;
- (4) The commanding officer of a division or a separate brigade; or
- (5) The commanding officer of a separate wing.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

## ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

(a) Special courts-martial may be convened by:

- (1) Any person who may convene a general court-martial;
- (2) The commanding officer of a garrison, fort, post, camp, station, air national guard base, or naval base or station;
- (3) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the army;
- (4) The commanding officer of a wing, group, separate squadron, or corresponding unit of the air force; or
- (5) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

#### ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

(a) Summary courts-martial may be convened by:

- (1) Any person who may convene a general or special court-martial;
- (2) The commanding officer of a detached company or other detachment, or corresponding unit of the army;
- (3) The commanding officer of a detached squadron or other detachment, or corresponding unit of the air force; or
- (4) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) When only one (1) commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases. Summary courts-martial may, however, be convened in any case by superior competent authority if considered desirable by such authority.

#### ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

(a) Any commissioned officer of the state military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.

(b) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person subject to this code, other than a commissioned officer.

(c)(1) Any enlisted member of the state military forces is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that:

(A) The membership of the court-martial be comprised entirely of officers; or

(B) Enlisted members comprise at least one-third (1/3) of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4) of this subsection, after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out the provisions of paragraph (2) of this subsection, the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) The accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under article 29.

(e) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in the convening authority's opinion, are best qualified for the duty by reason of

age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant.

#### ARTICLE 25a. RESERVED

#### ARTICLE 26. MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL

(a) A military judge shall be detailed to each general and special court-martial.

(b) A military judge shall be:

(1) An active or retired commissioned officer of an organized state military force and qualified, by reason of education, training, experience, and judicial temperament, for duty;

(2) A member in good standing of the bar of the highest court of a state or a member of the bar of a federal court for at least five (5) years;

(3) Certified as a military judge by the senior force judge advocate which is the same force as the accused; and

(4) Certified as qualified, by reason of education, training, experience, and judicial temperament, for duty.

(c) In the instance when a military judge is not a member of the bar of the highest court of the state, the military judge shall be deemed admitted pro hac vice, subject to filing a certificate with the senior force judge advocate which is the same force as the accused setting forth such qualifications provided in subsection (b) of this article.

(d) The military judge of a general or special court-martial shall be designated by the senior force judge advocate which is the same force as the accused, or a designee, for detail by the convening authority. Neither the



convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

(e) No person is eligible to act as military judge in a case if that person is the accuser or a witness, or has acted as preliminary hearing officer or a counsel in the same case.

(f) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor vote with the members of the court.

(g) A military judge may be detailed under subsection (a) of this article to a court-martial or a proceeding under article 30 that is convened in a different armed force, when so permitted by the senior force judge advocate of the armed force of which the military judge is a member.

#### ARTICLE 26a. MILITARY MAGISTRATES

(a) A military magistrate will be a commissioned officer of the state military forces who:

(1) Is a member of the bar of a federal court or a member of the bar of the highest court of a state; and

(2) Is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the state judge advocate.

(b) In accordance with regulations promulgated by the governor or his designee, in addition to duties when designated under this code, a military magistrate may be assigned to perform other duties of a nonjudicial nature.

#### ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

(a) General provision:

(1) For each general and special court-martial, the authority convening the court shall detail trial counsel, defense counsel, and such assistants as are appropriate.

(2) No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Except as provided in subsection (c) of this article, trial counsel, defense counsel, or assistant defense counsel detailed for a general or special court-martial must be:

- (1) A judge advocate as defined in article 1(a)(3) of this code; and
- (2) A member in good standing of the bar of the highest court of the state where the court-martial is held.

(c) Defense counsel and assistant defense counsel detailed for a special or general court-martial shall have the qualifications set forth in subsection (b) of this article.

(d) Trial counsel, assistant trial counsel, defense counsel, and assistant defense counsel detailed for a special court-martial must be determined to be competent to perform such duties by the senior force judge advocate, under such rules as the governor or his designee may prescribe.

## ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

Under such regulations as may be prescribed, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters who shall interpret for the court.

## ARTICLE 29. ASSEMBLY AND IMPANELING OF MEMBERS — DETAIL OF NEW MEMBERS AND MILITARY JUDGES

(a) The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused:

- (1) As a result of a challenge;
- (2) Under subsection (b)(1)(B) of this article; or
- (3) By order of the military judge or the convening authority for disability or other good cause.

(b) Impaneling.

(1) Under rules prescribed by the governor or his designated representative, the military judge of a general or special court-martial with members shall:

(A) After determination of challenges, impanel the court-martial; and

(B) Excuse the members who, having been assembled, are not impaneled.

(2) In a general court-martial, the military judge shall impanel eight (8) members.

(3) In a special court-martial, the military judge shall impanel four (4) members.

(c) In addition to members under subsection (b) of this article, the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

(d) Detail of new members.

(1) If, after members are impaneled, the membership of the court-martial is reduced to fewer than twelve (12) members with respect to a general court-martial in a capital case, fewer than six (6) members with respect to a general court-martial in a noncapital case, or fewer than four (4) members with respect to a special court-martial, the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2) of this subsection.

(2) Membership shall be as follows:

(A) At least six (6) but not more than eight (8) members with respect to a general court-martial; and

(B) Four (4) members with respect to a special court-martial.

(e) If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

(f) Evidence.

(1) In the case of new members under subsection (d) of this article, the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

(2) In the case of a new military judge under subsection (e) of this article, the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

## PART VI. PRE-TRIAL PROCEDURE

### ARTICLE 30. CHARGES AND SPECIFICATIONS

(a) In general. Charges and specifications:

(1) May be preferred only by a person subject to this chapter; and

(2) Shall be preferred by presentment in writing, signed under oath before a commissioned officer of the state military forces who is authorized to administer oaths.

(b) The writing under subsection (a) of this article shall state that:

(1) The signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(2) The matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) When charges and specifications are preferred under subsection (a) of this article, the proper authority shall, as soon as practicable:

(1) Inform the person accused of the charges and specifications; and

(2) Determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

#### ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

(a) No person subject to this code may compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him.

(b) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(c) No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

(d) No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

#### ARTICLE 32. INVESTIGATION

(a) In general.

(1)(A) Except as provided in subparagraph (B) of this paragraph, a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer, detailed by the convening authority in accordance with subsection (b) of this article.

(B) Under regulations prescribed by the governor or his designated representative, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter;

(B) Whether or not there is probable cause to believe that the accused committed the offense charged;

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense; and

(D) A recommendation as to the disposition that should be made of the case.

(b) Hearing officer.

(1) A preliminary hearing under this article shall be conducted by an impartial hearing officer who:

(A) Whenever practicable, shall be a judge advocate who is certified under article 27(b); or

(B) When it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B) of this subsection, a judge advocate who is certified under article 27(b) shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the government at the preliminary hearing.

(c) Report to convening authority. After a preliminary hearing under this article, the hearing officer shall submit to the convening authority a written report, accompanied by a recording of the preliminary hearing, that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a) (2) of this article, including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(2) Recommendations for any necessary modifications to the form of the charges or specifications;

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that under such rules as the governor or his designated representative may prescribe, is relevant to disposition under articles 30 and 34; and

(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (d) of this article.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

(1) Is present at the investigation;

(2) Is informed of the nature of each uncharged offense investigated; and

(3) Is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this article. A declination under this paragraph shall not serve as the sole basis for ordering a deposition under article 49.

(e) The requirements of this article are binding on all persons administering this code, but failure to follow them does not constitute jurisdictional error under such rules as the governor or his designated representative may prescribe.

(f) A defect in a report under subsection (c) of this article is not a basis for relief if the report is in substantial compliance with subsection (c).

### ARTICLE 33. DISPOSITION GUIDANCE

The governor or his designated representative shall issue nonbinding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under articles 30 and 34. Such guidance shall take into account, with appropriate consideration of military requirements, the principles of fair and evenhanded administration of Idaho and federal criminal law.

## ARTICLE 34. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL

(a) Staff judge advocate advice required before referral. Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that:

- (1) The specification alleges an offense under this chapter;
- (2) There is probable cause to believe that the accused committed the offense charged; and
- (3) A court-martial would have jurisdiction over the accused and the offense.

(b) Staff judge advocate recommendation as to disposition. Together with the written advice provided under subsection (a) of this article, the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(c) Staff judge advocate advice and recommendation to accompany referral. When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under subsection (a) of this article and the written recommendation of the staff judge advocate under subsection (b) of this article with respect to each specification shall accompany the referral.

(d) Special court-martial; convening authority consultation with judge advocate. Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(e) General and special courts-martial; correction of charges and specifications before referral. Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications:



(1) To correct errors in form; and

(2) When applicable, to conform to the substance of the evidence contained in a report under article 32(c).

(f) Referral defined. In this article, the term “referral” means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

## ARTICLE 35. SERVICE OF CHARGES — COMMENCEMENT OF TRIAL

(a) In general. Trial counsel detailed for a court-martial under article 27 shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) Commencement of trial.

(1) Subject to paragraphs (2) and (3) of this subsection, no trial or other proceeding of a general court-martial or a special court-martial, including any session under article 39(a), may be held over the objection of the accused:

(A) With respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) With respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) of this subsection may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B) of this subsection. If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

## PART VII. TRIAL PROCEDURE

### ARTICLE 36. GOVERNOR OR THE ADJUTANT GENERAL MAY PRESCRIBE RULES

Pretrial, trial, and posttrial procedures, including modes of proof, for courts-martial cases arising under this code, and for courts of inquiry, may be prescribed by the governor or the adjutant general by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

#### ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, the military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of this subsection shall not apply with respect to: (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or (2) to statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this code may, in preparing any such report: (1) consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or (2) give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

## ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

(a) The trial counsel of a general or special court-martial shall be a member in good standing of the state bar and shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(b) Defense counsel:

(1) The accused has the right to be represented in defense before a general or special court-martial or at an investigation under article 32 of this code as provided in this subsection.

(2) The accused may be represented by civilian counsel at the provision and expense of the accused.

(3) The accused may be represented:

(A) By military counsel detailed under article 27 of this code; or

(B) By military counsel of the accused's own selection if that counsel is reasonably available as determined under paragraph (7) of this subsection.

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) of this subsection shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6) of this subsection, if the accused is represented by military counsel of his own selection under paragraph (3)(B) of this subsection, any military counsel detailed under paragraph (3)(A) of this subsection shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under article 27 of this code to detail counsel, in that person's sole discretion:

(A) May detail additional military counsel as assistant defense counsel; and

(B) If the accused is represented by military counsel of the accused's own selection under paragraph (3)(B) of this subsection, may approve

a request from the accused that military counsel detailed under paragraph (3)(A) of this subsection act as associate defense counsel.

(7) The senior force judge advocate of the same force of which the accused is a member shall determine whether the military counsel selected by an accused is reasonably available.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel:

(1) May forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel considers appropriate; and

(2) May take other action authorized by this code.

#### ARTICLE 39. SESSIONS

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to article 35 of this code, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) Holding the arraignment and receiving the pleas of the accused;

(4) Conducting a sentencing proceeding and sentencing the accused in noncapital cases unless the accused requests sentencing by members under article 25; and

(5) Performing any other procedural function which does not require the presence of the members of the court under this code. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These

proceedings may be conducted notwithstanding the number of court members and without regard to article 29.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

#### ARTICLE 40. CONTINUANCES

The military judge of a court-martial or a summary court-martial may, for reasonable cause grant a continuance to any party for such time and as often as may appear to be just.

#### ARTICLE 41. CHALLENGES

(a) Challenges generally.

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one (1) person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the number of members required by article 16 of this code, all parties shall, notwithstanding article 29 of this code, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b) Preemptory challenges.

(1) Each accused and the trial counsel are entitled initially to one (1) preemptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a preemptory challenge reduces the court below the minimum number of members required by article 16 of this code, the parties shall, notwithstanding article 29 of this code, either exercise or

waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(3) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one (1) peremptory challenge against members not previously subject to peremptory challenge.

#### ARTICLE 42. OATHS OR AFFIRMATIONS

(a) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined under oath or affirmation.

#### ARTICLE 43. STATUTE OF LIMITATIONS

(a) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under article 15 of this code if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under article 15 of this code.

(b) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation

prescribed in this article.

(c) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(d) When the United States is at war, the running of any statute of limitations applicable to any offense under this code:

(1) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;

(2) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or

(3) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency;

is suspended until two (2) years after the termination of hostilities as proclaimed by the president or by a joint resolution of congress.

(e) Exception.

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(A) Has expired; or will be met.

(B) Will expire within one hundred eighty (180) days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) of this subsection are met.

(2) The conditions referred to in paragraph (1) of this subsection are that the new charges and specifications must:

(A) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty (180) days after the dismissal of the charges or specifications; and

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(f) Fraudulent enlistment or appointment. A person charged with fraudulent enlistment or fraudulent appointment under article 104a(1) may be tried by court-martial if the sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction with respect to that person, as follows:

(1) In the case of an enlisted member, during the period of the enlistment or five (5) years, whichever provides a longer period.

(2) In the case of an officer, during the period of the appointment or five (5) years, whichever provides a longer period.

(g) DNA evidence. If DNA testing implicates an identified person in the commission of an offense punishable by confinement for more than one (1) year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

#### ARTICLE 44. FORMER JEOPARDY

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c)(1) A court-martial with a military judge alone is a trial in the sense of this article if, without fault of the accused after introduction of evidence and before announcement of findings under article 53, the case is



dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

(2) A court-martial with a military judge and members is a trial in the sense of this article if, without fault of the accused after the members, having taken an oath as members under article 42 and after completion of challenges under article 41, are impaneled, and before announcement of findings under article 53, the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

#### ARTICLE 45. PLEAS OF THE ACCUSED

(a) Irregular and similar pleas. If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) Pleas of guilty. With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) Harmless error. A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

#### ARTICLE 46. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE IN TRIALS BY COURT

(a) In a case referred for trial by court-martial, the trial counsel and the defense counsel shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law

and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but which may not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the territories, commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

(b) Subpoena and other process generally. Any subpoena or other process issued under this article:

- (1) Shall be similar to that which courts of the state of Idaho or courts of the United States having criminal jurisdiction may issue;
- (2) Shall be executed in accordance with regulations prescribed by the governor or his designated representative; and
- (3) Shall run to any part of the United States and to the commonwealths and possessions of the United States.

(c) Subpoena and other process for witnesses. A subpoena or other process may be issued to compel a witness to appear and testify:

- (1) Before a court-martial, military commission, or court of inquiry;
- (2) At a deposition under article 49; or
- (3) As otherwise authorized under this chapter.

(d) In general. A subpoena or other process may be issued to compel the production of evidence:

- (1) For a court-martial, military commission, or court of inquiry;
- (2) For a deposition under article 49;
- (3) For an investigation of an offense under this chapter; or
- (4) As otherwise authorized under this chapter.

(e) Investigative subpoena. An investigative subpoena under subsection (c)(3) of this article may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the government to issue such a subpoena or a military judge issues such a subpoena pursuant to article 30.

(f) Warrant or order for wire or electronic communications. With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with article 26 or 30 may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the state of Idaho under title 19, Idaho Code, subject to such limitations as the governor or his designated representative may prescribe.

(g) Request for relief from subpoena or other process. If a person requests relief from a subpoena or other process under this article on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with article 26 or 30 shall review the request and shall:

- (1) Order that the subpoena or other process be modified or withdrawn, as appropriate; or
- (2) Order the person to comply with the subpoena or other process.

#### ARTICLE 47. REFUSAL OF PERSON NOT SUBJECT TO CHAPTER TO APPEAR, OR TESTIFY, OR PRODUCE EVIDENCE

(a) In general.

(1) Any person described in paragraph (2) of this subsection who does either of the following is guilty of an offense against the United States:

- (A) Willfully neglects or refuses to appear; or
- (B) Willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce.

(2) The persons referred to in paragraph (1) of this subsection are the following:

- (A) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (c) of article 46 and is provided a means for reimbursement from the government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage; and

(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of article 46.

(b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

#### ARTICLE 48. CONTEMPT

(a) Authority to punish.

(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) of this subsection may punish for contempt any person who:

(A) Uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

(B) Disturbs the proceeding by any riot or disorder; or

(C) Willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

(2) A judicial officer referred to in paragraph (1) of this subsection is any of the following:

(A) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter;

(B) Any military magistrate designated to preside under this code; or

(C) The governor or his designated representative of a court of inquiry.

(b) Review. A punishment under this article:

(1) If imposed by a military judge or military magistrate, may be reviewed by the district court of the judicial district where the proceeding was conducted in accordance with the applicable rules of procedure of the Idaho state courts; and

(2) If imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the governor or his designated representative.

#### ARTICLE 49. DEPOSITIONS

(a) In general.

(1) Subject to paragraph (2) of this subsection, a convening authority or a military judge may order depositions at the request of any party.

(2) A deposition may be ordered under paragraph (1) of this subsection only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

(3) A party who requests a deposition under this article shall give to every other party reasonable written notice of the time and place for the deposition.

(4) A deposition under this article shall be taken before, and authenticated by, an impartial officer, as follows:

(A) Whenever practicable, by an impartial judge advocate certified under article 27(b); or

(B) In exceptional circumstances, by an impartial military or civil officer authorized to administer oaths by the laws of the United States or the laws of the place where the deposition is taken.

(b) Representation by counsel. Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under article 27. In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as provided for in article 38(b).

(c) Admissibility and use as evidence. A deposition order under subsection (a) of this article does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as otherwise provided by this code, a party may use all or part of a deposition as provided by the rules of evidence.

#### ARTICLE 50. ADMISSIBILITY OF SWORN TESTIMONY FROM RECORDS OF COURTS OF INQUIRY

(a) Use as evidence by any party. In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible

under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Use of evidence by defense. Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Use in courts of inquiry and military boards. Such testimony may also be read in evidence before a court of inquiry.

(d) Audiotape or videotape. Sworn testimony that is recorded by audiotape, videotape, or similar method, and is contained in the duly authenticated record of proceedings of a court of inquiry, is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c) of this article.

#### ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this article and charge them to find the accused:

(1) Guilty;

(2) Not guilty; or

(3) Not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) of this article does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed

of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused:

- (1) Guilty;
- (2) Not guilty; or
- (3) Not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of article 52 of this code, the accused shall be found not guilty only by reason of lack of mental responsibility if:

- (1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or
- (2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

## ARTICLE 51. VOTING AND RULINGS

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in article 52 of this code, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to

the elements of the offense and charge them:

- (1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
- (2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;
- (3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and
- (4) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this article do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

## ARTICLE 52. VOTES REQUIRED FOR CONVICTION, SENTENCING, AND OTHER MATTERS

(a) In general. No person may be convicted of an offense in a general or special court-martial, other than:

- (1) After a plea of guilty under article 45(b);
- (2) By a military judge in a court-martial with a military judge alone, under article 16; or
- (3) In a court-martial with members under article 16, by the concurrence of at least three-fourths ( $\frac{3}{4}$ ) of the members present when the vote is taken.

(b) Level of concurrence required.

- (1) In general. Except as provided in subsection (a) of this article and in paragraph (2) of this subsection, all matters to be decided by members of



a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) Sentencing. All sentences imposed by members shall be determined by the concurrence of at least three-fourths ( $\frac{3}{4}$ ) of the members present when the vote is taken.

### ARTICLE 53. FINDINGS AND SENTENCING

(a) Announcement. A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) Sentencing generally.

(1) General and special courts-martial.

(A) Sentencing by military judge. Except as provided in subparagraph (B) of this paragraph, and in this code for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

(B) Sentencing by members. If the accused is convicted of an offense by general or special court-martial consisting of a military judge and members, and the accused elects sentencing by members under article 25, the members shall sentence the accused.

(C) Sentence of the accused. The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

(2) Summary courts-martial. If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

### ARTICLE 53a. PLEA AGREEMENTS

(a) In general.

(1) At any time before the announcement of findings under article 53, the convening authority and the accused may enter into a plea agreement with respect to such matters as the manner in which the convening authority will dispose of one (1) or more charges and specifications and

limitations on the sentence that may be adjudged for one (1) or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(b) Limitation on acceptance of plea agreements. The military judge of a general or special court-martial shall reject a plea agreement that:

(1) Contains a provision that has not been accepted by both parties;

(2) Contains a provision that is not understood by the accused;

(3) Except as provided in subsection (c) of this article, contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense;

(4) Is prohibited by law; or

(5) Is contrary to, or is inconsistent with, a regulation prescribed by the governor or his designated representative with respect to terms, conditions, or other aspects of plea agreements.

(c) Limited conditions for acceptance of plea agreement for sentence below mandatory minimum for certain offenses. With respect to an offense:

(1) The military judge may accept a plea agreement that provides for a sentence of bad-conduct discharge; and

(2) Upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(d) Binding effect of plea agreement. Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the court-martial.

#### ARTICLE 54. RECORD OF TRIAL

(a) General and special courts-martial. Each general or special court-martial shall keep a separate record of the proceedings in each case brought

before it. The record shall be certified by a court reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the governor or his designated representative may prescribe by regulation.

(b)(1) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction; and

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations.

(c) Summary courts-martial. Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner as may be prescribed by regulations.

(d) Copy to accused. A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(e) Contents of record.

(1) Except as provided in paragraph (2) of this subsection, the record shall contain such matters as the governor or his designated representative may prescribe by regulation.

(2) In accordance with regulations prescribed by the governor or his designated representative, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six (6) months, or forfeiture of pay for more than six (6) months.

(f) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(g) In the case of a general or special court-martial, upon request, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are certified. The victim shall be notified of the opportunity to receive the records of the proceedings.

## PART VIII. SENTENCES

## ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

## ARTICLE 56. SENTENCING

(a) The punishment which a court-martial may direct for an offense may not exceed such limits as prescribed by this code, but in no instance may a sentence exceed more than ten (10) years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one (1) year is a felony offense. Except for convictions by a summary court-martial, all other military offenses are misdemeanors. Any conviction by a summary court-martial is not a criminal conviction.

(b) The limits of punishment for violations of the punitive articles prescribed herein shall be the lesser of the sentences prescribed by the manual for courts-martial of the United States currently in effect, and the state manual for courts-martial, but in no instance shall any punishment exceed that authorized by this code.

(c) Imposition of sentence.

(1) In general. In sentencing an accused, a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the state military forces, taking into consideration:

(A) The nature and circumstances of the offense and the history and characteristics of the accused;

(B) The impact of the offense on:

(i) The financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) The mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) The need for the sentence:

- (i) To reflect the seriousness of the offense;
- (ii) To promote respect for the law;
- (iii) To provide just punishment for the offense;
- (iv) To promote adequate deterrence of misconduct;
- (v) To protect others from further crimes by the accused;
- (vi) To rehabilitate the accused; and
- (vii) To provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(D) The sentences available under this chapter.

(2) Sentencing by military judge. In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under article 53, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one (1) offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(3) Sentencing by members. In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

(d) Appeal of sentence to the district court of the county where the court-martial is held.

(1) With the approval of the senior force judge advocate concerned, the government may appeal a sentence, on the grounds that the sentence violates the law or the sentence is unreasonable.

(2) An appeal under this subsection must be filed within forty-two (42) days after the date of entry of judgment.

ARTICLE 56a. RESERVED

ARTICLE 57. EFFECTIVE DATE OF SENTENCES

(a) Execution of sentences. A court-martial sentence shall be executed and take effect as follows:

(1) Forfeiture and reduction. A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of:

(A) The date that is fourteen (14) days after the date on which the sentence is adjudged; or

(B) In the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) Confinement. Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) Approval of dismissal. If, in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the secretary concerned or such undersecretary or assistant secretary as may be designated by the secretary concerned. In such a case, the secretary, undersecretary, or assistant secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the secretary sees fit. In time of war or national emergency, he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six (6) months thereafter.

(4) Completion of appellate review. If a sentence extends to dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to dismissal, or a dishonorable or bad-conduct discharge, may be executed in accordance with service regulations after completion of appellate review and, with respect to dismissal, approval under paragraph (3) or (4) of this subsection, as appropriate.

(5) Other sentences. Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) Deferral of sentences.

(1) In general. On application by an accused, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned may, in his sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) Deferral of certain persons sentenced to confinement. In any case in which a court-martial sentences a person referred to in paragraph (3) of this subsection to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the state military forces by a state or foreign country referred to in that paragraph.

(3) Covered persons. Paragraph (2) of this subsection applies to a person subject to this chapter who, while in the custody of a state or foreign country, is temporarily returned by that state or foreign country to the state military forces for trial by court-martial and, after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) State defined. In this subsection, the term “state” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(5) Deferral while review pending. In any case in which a court-martial sentences a person to confinement, but in which review of the case is

pending, the secretary concerned may defer further service of the sentence to confinement while that review is pending.

(c) Appellate review.

(1) Completion of appellate review. Appellate review is complete under this article when a review under this code is completed or a review is completed by the Idaho state courts in accordance with the applicable rules of procedure of the Idaho state courts.

(2) Completion as final judgment of legality of proceedings. The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

#### ARTICLE 58. EXECUTION OF CONFINEMENT

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of “hard labor” as a sentence authorized under this code does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.

#### ARTICLE 58a. SENTENCES — REDUCTION IN ENLISTED GRADE

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as set forth in the judgment of the court-martial entered into the record, includes:

(1) A dishonorable or bad-conduct discharge;

(2) Confinement; or

(3) Reduction of that member to pay grade E-1, if such a reduction is authorized by regulation prescribed by the governor or his designated representative. The reduction in pay grade shall take effect on the date on which the judgment is so entered.



(b) If the sentence of a member who is reduced in pay grade under subsection (a) of this article is set aside or reduced, or, as finally affirmed, does not include any punishment named in subsection (a)(1) or (2) of this article, the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

#### ARTICLE 58b. SENTENCES — FORFEITURE OF PAY AND ALLOWANCES DURING CONFINEMENT

(a) Generally.

(1) A court-martial sentence described in paragraph (2) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this article shall take effect on the date determined under this code and may be deferred as provided by this code. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds (2/3) of all pay due that member during such period.

(2) A sentence covered by this article is any sentence that includes:

(A) Confinement for more than six (6) months; or

(B) Confinement for six (6) months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under article 60 of this code may waive any or all of the forfeitures of pay and allowances required by subsection (a) of this article for a period not to exceed six (6) months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) of this article is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2) of this article, the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

## PART IX. POSTTRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

### ARTICLE 59. ERROR OF LAW — LESSER INCLUDED OFFENSE

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

### ARTICLE 60. POSTTRIAL PROCESSING IN GENERAL AND SPECIAL COURTS-MARTIAL

(a) Statement of trial results.

(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled “statement of trial results,” which shall set forth:

(A) Each plea and finding;

(B) The sentence, if any; and

(C) Such other information as the governor or his designated representative may prescribe by regulation.

(2) Copies of the statement of trial results shall be provided promptly to the convening authority, the accused, and any victim of the offense.

(b) Posttrial motions. In accordance with regulations prescribed by the governor or his designated representative, the military judge in a general or special court-martial shall address all posttrial motions and other posttrial matters that:

(1) May affect a plea, a finding, the sentence, the statement of trial results, the record of trial, or any posttrial action by the convening authority; and

(2) Are subject to resolution by the military judge before entry of judgment.

## ARTICLE 61. WAIVER OF RIGHT TO APPEAL — WITHDRAWAL OF APPEAL

(a) Waiver of right to appeal. After entry of judgment in a general or special court-martial, under procedures prescribed by the secretary concerned, the accused may waive the right to appellate review in each case subject to such review under this code. Such a waiver shall be signed by the accused and by defense counsel and attached to the record of trial.

(b) Withdrawal of appeal. In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) Waiver or withdrawal as bar. A waiver or withdrawal under this article bars review under this code.

## ARTICLE 62. APPEAL BY THE STATE

(a) Generally.

(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) of this paragraph that has previously been issued by appropriate authority.

(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

(2)(A) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within seventy-two (72) hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(B) An appeal of an order or ruling may not be taken when prohibited by article 44.

(3) An appeal under this article shall be diligently prosecuted as provided by law.

(b) An appeal under this article shall be forwarded to the court prescribed in article 67a of this code. In ruling on an appeal under this article, that court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this article shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(e) The provisions of this article shall be liberally construed to effect its purposes.

## ARTICLE 63. REHEARINGS

(a) Each rehearing under this code shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of

which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

(b) If the sentence adjudged by the first court-martial was in accordance with a plea agreement under article 53a and the accused at the rehearing does not comply with the agreement, or if a plea of guilty was entered for an offense at the first court-martial and a plea of not guilty was entered at the rehearing, the sentence as to those charges or specifications may include any punishment not in excess of that which could have been adjudged at the first court-martial, subject to such limitations as the governor or his designated representative may prescribe by regulation.

(c) If, after appeal by the government under article 56(d), the sentence adjudged is set aside and a rehearing on sentence is ordered by the state court, the court-martial may impose any sentence that is in accordance with the order or ruling setting aside the adjudged sentence, subject to such limitations as the governor or his designated representative may prescribe by regulation.

#### ARTICLE 64. REVIEW BY THE SENIOR FORCE JUDGE ADVOCATE REVIEW OF FINDING OF GUILTY IN SUMMARY COURT-MARTIAL

(a) The senior force judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether:

(A) The court had jurisdiction over the accused and the offense;

(B) The charge and specification stated an offense; and

(C) The sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b) of this article, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) Record. The record of trial and related documents in each case reviewed under subsection (a) of this article shall be sent for action to the adjutant general if:

- (1) The judge advocate who reviewed the case recommends corrective action;
- (2) The sentence approved under this code extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six (6) months; or
- (3) Such action is otherwise required by regulations of the adjutant general.

(c) The adjutant general's discretion.

(1) The adjutant general may:

- (A) Disapprove or approve the findings or sentence, in whole or in part;
- (B) Remit, commute, or suspend the sentence in whole or in part;
- (C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or
- (D) Dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) If the opinion of the senior force judge advocate, or designee, in the senior force judge advocate's review under subsection (a) of this article is that corrective action is required as a matter of law and if the adjutant general does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the governor for review and action as deemed appropriate.

(d) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case

as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be limited to questions of subject matter jurisdiction.

(e) The record of trial and related documents in each case reviewed under subsection (d) of this article shall be sent for action to the adjutant general.

(1) The adjutant general may:

(A) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the government, as the adjutant general deems appropriate; or

(B) Return the record of trial and related documents to the senior force judge advocate for appeal by the government as provided by law.

#### ARTICLE 65. TRANSMITTAL AND REVIEW OF RECORDS

(a) Finding of guilty in general or special court-martial. If the judgment of a general or special court-martial entered under this code includes a finding of guilty, the record shall be transmitted to the state staff judge advocate.

(b) Other cases. In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the adjutant general may prescribe by regulation.

#### ARTICLE 66. RESERVED

#### ARTICLE 67. RESERVED

#### ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

Decisions of a court-martial are from a court with jurisdiction to issue felony convictions and appeals therefrom will be made to the district court of the judicial district wherein the court-martial was conducted within forty-two (42) days from the entry of judgment. For courts-martial held outside of the state of Idaho, venue for appeal purposes shall be in the district court of the fourth judicial district, Ada county, Idaho. The appellate procedures to be followed shall be those provided by law and rule for the appeal of state criminal cases.

#### ARTICLE 68. RESERVED

## ARTICLE 69. RESERVED

## ARTICLE 70. APPELLATE COUNSEL

(a) The senior force judge advocate shall detail a judge advocate as appellate government counsel to represent the state in the review or appeal of cases specified in article 67a of this code and before any federal court when requested to do so by the state attorney general. Appellate government counsel must be a member in good standing of the bar of the highest court of the state to which the appeal is taken.

(b) Upon an appeal by the state, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

(d) Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c) of this article.

(e) An accused may be represented by civilian appellate counsel at no expense to the state.

## ARTICLE 71. EXECUTION OF SENTENCE — SUSPENSION OF SENTENCE

(a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under article 61 of this code, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in such cases when review is completed by an appellate court prescribed in article 67a of this code and is deemed final by the law of state where the judgment was had.

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under article 61 of



this code, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under article 64 of this code is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under article 60 of this code when so approved under that article.

## ARTICLE 72. VACATION OF SUSPENSION

(a) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The special court-martial convening authority may detail a judge advocate who is certified under article 27(b) of this code to conduct the hearing. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions under article 57 in this code.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

## ARTICLE 73. PETITION FOR A NEW TRIAL

At any time within three (3) years after approval by the convening authority of a court-martial sentence, the accused may petition the adjutant general for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

## ARTICLE 74. REMISSION AND SUSPENSION

(a) Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any

sentence, including all uncollected forfeitures other than a sentence approved by the governor.

(b) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

#### ARTICLE 75. RESTORATION

(a) Under such regulations as may be prescribed, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the governor or his designated representative may substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the governor or his designated representative may substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) The adjutant general may prescribe regulations, with such limitations as the adjutant general considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

#### ARTICLE 76. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this code are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in article 73 of this code and to action under article 74 of this code.

#### ARTICLE 76a. LEAVE REQUIRED TO BE TAKEN PENDING REVIEW OF CERTAIN COURT-MARTIAL CONVICTIONS

Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this article if the sentence, as approved under article 60 of this code, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under article 60 of this code or at any time after such date, and such leave may be continued until the date on which action under this article is completed or may be terminated at any earlier time.

#### ARTICLE 76b. RESERVED

### PART X. PUNITIVE ARTICLES

#### ARTICLE 77. PRINCIPALS

Any person subject to this code who:

(1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this code;

is a principal.

#### ARTICLE 78. ACCESSORY AFTER THE FACT

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

#### ARTICLE 79. CONVICTION OF OFFENSE CHARGED, LESSER INCLUDED OFFENSES, AND ATTEMPTS

(a) In general. An accused may be found guilty of any of the following:

- (1) The offense charged;
- (2) A lesser included offense;
- (3) An attempt to commit the offense charged; or
- (4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

(b) Definition. In this article, the term “lesser included offense” means:

- (1) An offense that is necessarily included in the offense charged; and
- (2) Any lesser included offense so designated by regulation prescribed by the adjutant general.

(c) Regulatory authority. Any designation of a lesser included offense in a regulation referred to in subsection (b) of this article shall be reasonably included in the greater offense.

#### ARTICLE 80. ATTEMPTS

(a) An act done with specific intent to commit an offense under this code amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

#### ARTICLE 81. CONSPIRACY

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one (1) or more of the conspirators commits an act to effect the object of the conspiracy, be punished as a court-martial may direct.

## ARTICLE 82. SOLICITATION

(a) Soliciting commission of offenses generally. Any person subject to this code who solicits or advises another to commit an offense under this code, other than an offense specified in subsection (b) of this article, shall be punished as a court-martial may direct.

(b) Soliciting desertion, mutiny, sedition, or misbehavior before the enemy. Any person subject to this code who solicits or advises another to violate article 85, article 94, or article 99:

(1) If the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and

(2) If the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.

## ARTICLE 83. MALINGERING

Any person subject to this code who, for the purpose of avoiding work, duty, or service, feigns illness, physical disablement, mental lapse, or derangement, or who intentionally inflicts self-injury, shall be punished as a court-martial may direct.

## ARTICLE 84. BREACH OF MEDICAL QUARANTINE

Any person subject to this code who is ordered into medical quarantine by a person authorized to issue such order and who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority shall be punished as a court-martial may direct.

## ARTICLE 85. DESERTION

(a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away there from permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away there from permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment as a court-martial may direct.

#### ARTICLE 86. ABSENCE WITHOUT LEAVE

Any person subject to this code who, without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

#### ARTICLE 87. MISSING MOVEMENT

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

#### ARTICLE 87a. RESISTANCE, FLIGHT, BREACH OF ARREST, AND ESCAPE

Any person subject to this code who resists apprehension, flees from apprehension, breaks arrest, or escapes from custody or confinement shall be punished as a court-martial may direct.

#### ARTICLE 87b. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION

(a) Escape from correctional custody. Any person subject to this code:

- (1) Who is placed in correctional custody by a person authorized to do so;
- (2) Who, while in correctional custody, is under physical restraint; and
- (3) Who escapes from the physical restraint before being released from the physical restraint by proper authority;

shall be punished as a court-martial may direct.

(b) Breach of correctional custody. Any person subject to this code:

- (1) Who is placed in correctional custody by a person authorized to do so;
- (2) Who, while in correctional custody, is under restraint other than physical restraint; and
- (3) Who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

(c) Breach of restriction. Any person subject to this code:

- (1) Who is ordered to be restricted to certain limits by a person authorized to do so; and
- (2) Who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority;

shall be punished as a court-martial may direct.

#### ARTICLE 88. CONTEMPT TOWARD OFFICIALS

Any commissioned officer who uses contemptuous words against the president, the vice president, congress, the secretary of defense, the

secretary of a military department, the secretary of homeland security, or the governor or legislature of the state shall be punished as a court-martial may direct.

#### ARTICLE 89. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER

(a) Disrespect. Any person subject to this code who behaves with disrespect toward that person's superior commissioned officer shall be punished as a court-martial may direct.

(b) Assault. Any person subject to this code who strikes that person's superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer's office shall be punished: if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct; and, if the offense is committed at any other time, by such punishment as a court-martial may direct.

#### ARTICLE 90. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER

Any person subject to this code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) Willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment as a court-martial may direct.

#### ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;



(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

## ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces, which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

## ARTICLE 93. CRUELTY AND MALTREATMENT

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

### ARTICLE 93a. PROHIBITED ACTIVITY WITH MILITARY RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST

(a) Abuse of training leadership position. Any person subject to this code:

(1) Who is an officer or a noncommissioned officer;

(2) Who is in a training leadership position with respect to a specially protected junior member of the state military forces; and

(3) Who engages in prohibited sexual activity with such specially protected junior member of the state military forces;

shall be punished as a court-martial may direct.

(b) Abuse of position as military recruiter. Any person subject to this code:

(1) Who is a military recruiter and engages in prohibited sexual activity with an applicant for state military service; or

(2) Who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the state military forces who is enlisted under a delayed entry program;

shall be punished as a court-martial may direct.

(c) Consent. Consent is not a defense for any conduct at issue in a prosecution under this article.

(d) Definitions. In this article:

(1) “Specially protected junior member of the state military forces” means:

(A) A member of the state military forces who is assigned to, or is awaiting assignment to, basic training or other initial training, including a member who is enlisted under a delayed entry program;

(B) A member of the state military forces who is a cadet, an officer candidate, or a student in any other officer qualification program; and

(C) A member of the state military forces in any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification.

(2) “Training leadership position” means, with respect to a specially protected junior member of the state military forces, any instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit (ROTC), a training program for entry into the state military forces, or any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification.

(3) “Applicant for state military service” means a person who, under the regulations prescribed by the secretary concerned, is an applicant for original enlistment or appointment in the state military forces.

(4) “Military recruiter” means a person who, under regulation prescribed by the secretary concerned, has the primary duty to recruit persons for the state military forces.

(5) “Prohibited sexual activity” means, as specified in the regulations prescribed by the governor or his designated representative, inappropriate physical intimacy under circumstances described in such regulations.

#### ARTICLE 94. MUTINY OR SEDITION

(a) Any person subject to this code who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

#### ARTICLE 95. OFFENSES BY SENTINEL OR LOOKOUT

(a) Drunk or sleeping on post, or leaving post before being relieved. Any sentinel or lookout who is drunk on post, who sleeps on post, or who leaves post before being regularly relieved shall be punished:

(1) If the offense is committed in time of war, by confinement of not more than ten (10) years or other punishment as a court-martial may direct; and

(2) If the offense is committed at any other time, by such punishment as a court-martial may direct.

(b) Loitering or wrongfully sitting on post. Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.

#### ARTICLE 95a. DISRESPECT TOWARD SENTINEL OR LOOKOUT

(a) Disrespectful language toward sentinel or lookout. Any person subject to this code who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout who is in the execution of duties as a sentinel or lookout shall be punished as a court-martial may direct.

(b) Disrespectful behavior toward sentinel or lookout. Any person subject to this code who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout who is in the execution of duties as a sentinel or lookout shall be punished as a court-martial may direct.

#### ARTICLE 96. RELEASING PRISONER WITHOUT PROPER AUTHORITY — DRINKING WITH PRISONER

(a) Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(b) Drinking with prisoner. Any person subject to this code who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.

#### ARTICLE 97. UNLAWFUL DETENTION

Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

#### ARTICLE 98. MISCONDUCT AS PRISONER

Any person subject to this code who:

(1) For the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

#### ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

Any person subject to this code who before or in the presence of the enemy:

- (1) Runs away;
  - (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
  - (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
  - (4) Casts away his arms or ammunition;
  - (5) Is guilty of cowardly conduct;
  - (6) Quits his place of duty to plunder or pillage;
  - (7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;
  - (8) Willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
  - (9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or its allies, to the state, or to any other state, when engaged in battle;
- shall be punished as a court-martial may direct.

#### ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

Any person subject to this code who compels or attempts to compel the commander of any of the state military forces of the state, or of any other state, place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

#### ARTICLE 101. IMPROPER USE OF COUNTERSIGN

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another,

who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

#### ARTICLE 102. FORCING A SAFEGUARD

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

#### ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

(a) All persons subject to this code shall secure all public property taken for the service of the United States or the state and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this code who:

(1) Fails to carry out the duties prescribed in subsection (a) of this article;

(2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

#### ARTICLE 103a. SPIES — RESERVED

#### ARTICLE 103b. ESPIONAGE — RESERVED

#### ARTICLE 103c. AIDING THE ENEMY

Any person subject to this code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

#### ARTICLE 104. PUBLIC RECORD OFFENSES

Any person subject to this code who, willfully and unlawfully:

(1) Alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

(2) Takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;

shall be punished as a court-martial may direct.

#### ARTICLE 104a. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION

Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

#### ARTICLE 104b. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

#### ARTICLE 105. RESERVED

##### ARTICLE 105a. FALSE OR UNAUTHORIZED PASS OFFENSES

(1) Wrongful making, altering, counterfeiting, tampering. Any person subject to this code who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(2) Wrongful sale, *etc.* Any person subject to this code who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(3) Wrongful use or possession. Any person subject to this code who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

ARTICLE 106. IMPERSONATION OF AN OFFICER,  
NONCOMMISSIONED OR PETTY OFFICER, OR AGENT OR  
OFFICIAL

(1) In general. Any person subject to this code who, wrongfully and willfully, impersonates:

- (a) An officer, a noncommissioned officer, or a petty officer;
- (b) An agent of superior authority of one of the armed forces; or
- (c) An officer of a government;

shall be punished as a court-martial may direct.

(2) Impersonation with intent to defraud. Any person subject to this code who, wrongfully and willfully and with intent to defraud, impersonates any person referred to in subsection (1) of this article shall be punished as a court-martial may direct.

(3) Impersonation of government official without intent to defraud. Any person subject to this code who, wrongfully and willfully and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

ARTICLE 106a. WEARING UNAUTHORIZED INSIGNIA,  
DECORATION, BADGE, RIBBON, DEVICE, OR LAPEL BUTTON

Any person subject to this code:



(1) Who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and

(2) Who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing;

shall be punished as a court-martial may direct.

#### ARTICLE 107. FALSE OFFICIAL STATEMENTS

(1) False official statements. Any person subject to this code who, with intent to deceive:

(a) Signs any false record, return, regulation, order, or other official document in the line of duty, knowing it to be false; or

(b) Makes any other false official statement in the line of duty, knowing it to be false;

shall be punished as a court-martial may direct.

(2) False swearing. Any person subject to this code:

(a) Who is on military orders;

(b) Who takes an oath that:

(i) Is administered in a manner in which such oath is required or authorized by law; and

(ii) Is administered by a person with authority to do so; and

(c) Who, upon such oath, makes or subscribes to a statement, if the statement is false and at the time of taking the oath the person does not believe the statement to be true, shall be punished as a court-martial may direct.

#### ARTICLE 107a. PAROLE VIOLATION

Any person subject to this code:

(1) Who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and

(2) Who violates the conditions of parole;

shall be punished as a court-martial may direct.

## ARTICLE 108. MILITARY PROPERTY — LOSS, DAMAGE, DESTRUCTION OR WRONGFUL DISPOSITION

Any person subject to this code who, without proper authority:

- (1) Sells or otherwise disposes of;
- (2) Willfully or through neglect damages, destroys, or loses; or
- (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States or of any state shall be punished as a court-martial may direct.

## ARTICLE 108a. CAPTURED OR ABANDONED PROPERTY

(1) All persons subject to this code shall secure all public property taken for the service of the United States, or the state, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

- (a) Fails to carry out the duties prescribed in subsection (1) of this article;
- (b) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- (c) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

## ARTICLE 109. PROPERTY OTHER THAN MILITARY PROPERTY — WASTE, SPOILAGE OR DESTRUCTION

Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of any state shall be punished as a court-martial may direct.

## ARTICLE 109a. MAIL MATTER — WRONGFUL TAKING, OPENING

(1) Taking. Any person subject to this code who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, while on military duty, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

(2) Opening, secreting, destroying, stealing. Any person subject to this code who, while on military duty, wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

#### ARTICLE 110. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT

(a) Willful and wrongful hazarding. Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel or aircraft of the armed forces of the United States or any state military forces shall suffer such punishment as a court-martial may direct.

(b) Negligent hazarding. Any person subject to this code who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces of the United States or any state military forces shall be punished as a court-martial may direct.

#### ARTICLE 111. LEAVING SCENE OF A VEHICLE ACCIDENT

(a) Driver. Any person on state military orders:

(1) Who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

(2) Who wrongfully leaves the scene of the accident;

(3) Who, without providing assistance to an injured person; or

(4) Who, without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(b) Senior passenger. Any person subject to this code:

(1) Who is passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

(2) Who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

(3) Who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident;

(i) Without providing assistance to an injured person; or

(ii) Without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

## ARTICLE 112. DRUNKENNESS AND OTHER INCAPACITATION OFFENSES

(1) Drunk on duty. Any person subject to this code who is drunk on duty shall be punished as a court-martial may direct.

(2) Incapacitation for duty from drunkenness or drug use. Any person subject to this code who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.

(3) Drunk prisoner. Any person subject to this code who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

(4) Definitions. “Drunk” means any intoxication sufficient to impair the rational and full exercise of the mental or physical faculties, or an alcohol concentration of 0.08 or more as shown by an analysis of the person’s blood, breath, or urine subject to the testing standards within title 18, Idaho Code. “Incapacitated” means unfit or unable to perform duties properly as a result of prior alcohol consumption.

(5) Testing. Commanders may order the person to provide a breath, blood, or urine sample if the commander has probable cause to believe that the person is drunk or incapacitated while on duty. Testing under this article will be performed by a peace officer, hospital, or health care professional in the jurisdiction in which a violation of this article has occurred. No military member, peace officer, hospital, or health care professional, as defined in title 18, Idaho Code, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or

for the presence of drugs or other intoxicating substances at the request of a commander. In the event a person ordered to provide a breath, blood, or urine sample refuses to do so, that person may be punished for violating a lawful order as a court-martial may direct.

#### ARTICLE 112a. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES

(a) Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of any state military forces a substance described in subsection (b) of this article shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) of this article are the following:

- (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.
- (2) Any substance not specified in paragraph (1) of this subsection that is listed on a schedule of controlled substances prescribed by the president for the purposes of the uniform code of military justice of the armed forces of the United States, [10 U.S.C. 801 et seq.](#)
- (3) Any other substance not specified in paragraph (1) of this subsection or contained on a list prescribed by the president under paragraph (2) of this subsection that is listed in schedules I through V of article 202 of the controlled substances act, [21 U.S.C. 812.](#)

#### ARTICLE 113. RESERVED

#### ARTICLE 114. ENDANGERMENT OFFENSES

(a) Reckless endangerment. Any person subject to this code who engages in conduct that:

- (1) Is wrongful and reckless or is wanton; and
  - (2) Is likely to produce death or grievous bodily harm to another person;
- shall be punished as a court-martial may direct.

(b) Dueling. Any person subject to this code:

(1) Who fights or promotes, or is concerned in or connives at fighting, a duel; or

(2) Who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority;

shall be punished as a court-martial may direct.

(c) Firearm discharge, endangering human life. Any person subject to this code who negligently discharges a firearm under circumstances such as to endanger human life shall be punished as a court-martial may direct.

(d) Carrying concealed weapon. Any person subject to this chapter who, while on military orders, unlawfully or in violation of the adjutant general's policy or regulation, carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.

#### ARTICLE 115. COMMUNICATING THREATS

(1) Communicating threats generally. Any person subject to this code who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

(2) Communicating threat to use explosive, *etc.* Any person subject to this code who wrongfully communicates a threat to injure the person or property of another by use of:

(a) An explosive;

(b) A weapon of mass destruction;

(c) A biological or chemical agent, substance, or weapon; or

(d) A hazardous material;

shall be punished as a court-martial may direct.

(3) Communicating false threat concerning use of explosive, *etc.* Any person subject to this code who maliciously communicates a false threat concerning injury to the person or property of another by use of:

(a) An explosive;

(b) A weapon of mass destruction;

- (c) A biological or chemical agent, substance, or weapon; or
- (d) A hazardous material;

shall be punished as a court-martial may direct. The term “false threat” as used in this subsection means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.

#### ARTICLE 116. RIOT OR BREACH OF PEACE

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

#### ARTICLE 117. PROVOKING SPEECHES OR GESTURES

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

#### ARTICLE 118. RESERVED

#### ARTICLE 119. RESERVED

#### ARTICLE 120. RESERVED

#### ARTICLE 121. RESERVED

#### ARTICLE 122. RESERVED

#### ARTICLE 123. OFFENSES CONCERNING GOVERNMENT COMPUTERS

(a) In general. Any person subject to this chapter who:

(1) Knowingly accesses a government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States or the state, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;

(2) Intentionally accesses a government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any such government computer; or

(3) Knowingly causes the transmission of a program, information, code, or command and, as a result of such conduct, intentionally causes damage without authorization to a government computer;

shall be punished as a court-martial may direct.

(b) Definition. In this article, the term “government computer” means a computer owned or operated by or on behalf of the United States government or state.

#### ARTICLE 123a. RESERVED

#### ARTICLE 124. RESERVED

#### ARTICLE 124a. BRIBERY

(a) Asking for, accepting, or receiving a thing of value. Any person subject to this code:

(1) Who occupies an official position or who has official duties with the state military forces; and

(2) Who wrongfully asks, accepts, or receives a thing of value with the intent to have the person’s decisions or actions influenced with respect to an official matter in which the United States or the state is interested;

shall be punished as a court-martial may direct.

(b) Promising, offering, or giving a thing of value. Any person subject to this code who wrongfully promises, offers, or gives a thing of value to another person who occupies an official position or who has official duties with the state military forces, with the intent to influence the decision or action of another person with respect to an official matter in which the United States or the state is interested, shall be punished as a court-martial may direct.

#### ARTICLE 124b. GRAFT

(a) Asking for, accepting, or receiving a thing of value. Any person subject to this code:

(1) Who occupies an official position or who has official duties with the state military forces; and



(2) Who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States or the state is interested;

shall be punished as a court-martial may direct.

(b) Promising, offering, or giving a thing of value. Any person subject to this code who wrongfully promises, offers, or gives a thing of value to another person who occupies an official position or who has official duties with the state military forces, as compensation for or in recognition of services rendered or to be rendered by the other person with respect to an official matter in which the United States or the state is interested, shall be punished as a court-martial may direct.

ARTICLE 125. RESERVED

ARTICLE 126. RESERVED

ARTICLE 127. RESERVED

ARTICLE 128. RESERVED

ARTICLE 129. RESERVED

ARTICLE 130. RESERVED

ARTICLE 131. RESERVED

[ARTICLE 131a. RESERVED]

ARTICLE 131b. OBSTRUCTING JUSTICE

Any person subject to this code who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending pursuant to this code, with intent to influence, impede, or otherwise obstruct the due administration of justice, shall be punished as a court-martial may direct.

ARTICLE 131c. MISPRISION OF A SERIOUS OFFENSE

In general. Any person subject to this code:

(1) Who knows that another person has committed a serious offense; and

(2) Who wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or military authorities as soon as possible;

shall be punished as a court-martial may direct.

#### ARTICLE 131d. WRONGFUL REFUSAL TO TESTIFY

Any person subject to this code who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, a preliminary hearing, or an officer taking a deposition of or for the state military forces or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.

#### ARTICLE 131e. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY

Any person subject to this code who, knowing that one (1) or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.

#### ARTICLE 131f. NONCOMPLIANCE WITH PROCEDURAL RULES

Any person subject to this code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

#### ARTICLE 131g. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING

Any person subject to this code who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this code, wrongfully acts with the intent:

- (1) To influence, impede, or obstruct the conduct of the proceeding; or
  - (2) Otherwise to obstruct the due administration of justice;
- shall be punished as a court-martial may direct.

## ARTICLE 132. RETALIATION

(a) Any person subject to this code who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication:

- (1) Wrongfully takes or threatens to take an adverse personnel action against any person; or
  - (2) Wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;
- shall be punished as a court-martial may direct.

(b) Definitions. In this article:

(1) “Protected communication” means the following:

(i) A lawful communication to a member of congress or an inspector general; or

(ii) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination; or

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) “Inspector general” has the meaning given that term in [10 U.S.C. 1034](#).

(3) “Covered individual or organization” means any recipient of a communication specified in clauses (i) through (vi) of [10 U.S.C. 1034\(b\)](#)

(1)(B).

### ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

### ARTICLE 134. GENERAL ARTICLE

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces shall be taken cognizance of by a court-martial and punished at the discretion of a military court. Offenses which may be punished under this article include, but are not limited to, those offenses set out in the manual for courts-martial as punishable under this article of the uniform code of military justice, those offenses that violate the criminal laws of the state where the offense occurred, and those offenses that violate the criminal laws of the United States. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with article 2(b) of this code.

## PART XI. MISCELLANEOUS PROVISIONS

### ARTICLE 135. COURTS OF INQUIRY

(a) Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be

given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

#### ARTICLE 136. AUTHORITY TO ADMINISTER OATHS AND TO ACT AS NOTARY

(a) The following persons may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the naval militia.

(5) All other persons designated by regulations of the armed forces of the United States or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, and trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces of the United States or by statute.

(c) The signature without seal of any such person, together with the title of his office, is prima facie evidence of the person's authority.

#### ARTICLE 137. ARTICLES TO BE EXPLAINED

(a) The articles of this code specified in subsection (c) of this article shall be carefully explained to each enlisted member at the time of, or within thirty (30) days after, the member's initial entrance into a duty status with the state military forces.

(b) Such articles shall be explained again:

- (1) After the member has completed basic or recruit training; and
- (2) At the time when the member reenlists.

(c) This subsection applies with respect to articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code.

(d) The text of the code and of the regulations prescribed under such code shall be made available to a member of the state military forces, upon request by the member, for the member's personal examination.

#### ARTICLE 138. COMPLAINTS OF WRONGS

Any member of the state military forces who believes himself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained

of, and shall, as soon as possible, send to the adjutant general a true statement of that complaint, with the proceedings had thereon.

#### ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that officer may, under such regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by that officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

#### ARTICLE 140. DELEGATION BY THE GOVERNOR

The governor may delegate any authority vested in the governor under this code and provide for the sub-delegation of any such authority, except the power given the governor by article 22 of this code.

#### ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other necessary expenses of prosecution and the administration of military justice, to include courts-martial and nonjudicial punishment, not otherwise payable

by any other source, shall be paid out of the military division support fund as established in [section 46-806, Idaho Code](#).

#### ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

(a) Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the state and delivered to the court or imposing officer or to a person executing their process. Fines may be collected in the following manner:

- (1) By cash or money order;
- (2) By retention of any pay or allowances due or to become due the person fined from any state or the United States;
- (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(b) Any sum so received or retained shall be deposited in the military division support fund as established in [section 46-806, Idaho Code](#), or to whomever the court so directs.

#### ARTICLE 143. UNIFORMITY OF INTERPRETATION

This code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the uniform code of military justice, 10 U.S.C. chapter 47.

#### ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

All persons acting under the provisions of this code, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this code.

#### ARTICLE 145. SEVERABILITY

The provisions of this code are hereby declared to be severable and if any provision of this code or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this code.

#### ARTICLE 146. SHORT TITLE

This act may be cited as the “Idaho Code of Military Justice” (ICMJ).



## ARTICLE 147. TIME OF TAKING EFFECT

This act takes effect July 1, 2019.

### **History.**

**I.C., § 46-1102**, as added by 2015, ch. 268, § 2, p. 1078; am. 2019, ch. 113, § 1, p. 372.

## STATUTORY NOTES

### Cross References.

Adjutant general, § 46-111.

Attorney general, § 67-1401 et seq.

### Prior Laws.

Former § 46-1102 was repealed. See Prior Laws, § 46-1101.

### Amendments.

The 2019 amendment, by ch. 113, rewrote the section to the extent that a detailed comparison is impracticable.

### Compiler's Notes.

The term “this act” in Articles 1, 146 and 147 refers to S.L. 2015, Chapter 268, which is codified as § 46-1101 et seq. The reference probably should be to “this code,” being the model state code of military justice.

For more on the manual for courts-martial of the United States, referred to in Articles 56(b) and 134, see [https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20\(Final\)%20\(20190108\).pdf?ver=2019-01-11-115724-610](https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20(Final)%20(20190108).pdf?ver=2019-01-11-115724-610).

Article 131a was added in brackets by the compiler to account for that section in the uniform code of military justice, headed “Subordination of Perjury.”

The words and abbreviations enclosed in parentheses so appeared in the law as enacted.

**§ 46-1103. Arrest.** — Arrest of members of the Idaho military not in federal service by members of the Idaho military while acting in their military capacity is prohibited, except in the following circumstances:

(1) If any member fails or refuses to report to his appointed place of duty, his commanding officer in the rank of major or above is authorized to arrest or cause to be arrested such member and have him brought before the commanding officer at his unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport, or cause to be transported, such member to his appointed place of duty, whether within or without the borders of the state. Furthermore, if a commander, in the rank of major or above, finds that probable cause exists to believe that a minor offense has been committed by a member of his command, he may cause the member to be arrested and brought before him for the purpose of processing nonjudicial punishment under article 15 of the model state code of military justice as provided in [section 46-1102, Idaho Code](#). If military personnel are not available for the purpose of making the arrest or if the officer ordering the arrest deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve warrants of arrest, and such sheriff or peace officer shall serve such warrants of arrest immediately, whenever practicable, and make return thereof to the commanding officer issuing the warrant. Upon receipt of the notification of arrest, the commanding officer shall direct that the arrestee be retrieved and brought before him within a reasonable time. Warrants issued under this subsection shall be the equivalent of a misdemeanor warrant issued by a court of the state of Idaho.

(2) If any member of the Idaho military has had charges preferred against him under this chapter, and the convening authority to whom the charges have been forwarded has found that probable cause exists that the offense was committed by the accused and that the incarceration of the accused pending court-martial is required because of special circumstances found to exist which warrant such incarceration, then the convening authority is authorized to arrest such member or cause him to be arrested and have him confined pending trial. If military personnel are not available for the

purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest, and said sheriff or peace officer shall effect the arrest and hold the accused in the county jail of the county in which the arrest is effected. Upon receipt of the notification of arrest, in accordance with the provisions of [section 46-1102, Idaho Code](#), the commanding officer may direct that the arrestee be retrieved and brought before him within a reasonable time. Warrants issued under this subsection shall be the equivalent of a felony warrant issued by a court of the state of Idaho.

**History.**

[I.C., § 46-1103](#), as added by 2015, ch. 268, § 2, p. 1078.

**STATUTORY NOTES**

**Prior Laws.**

Former § 46-1103 was repealed. See Prior Laws, § 46-1101.

**§ 46-1104. Regulatory authority.** — The adjutant general shall have authority to promulgate such regulations as he deems necessary and proper to carry out the intent of this code.

**History.**

I.C., § 46-1104, as added by 2015, ch. 268, § 2, p. 1078.

**STATUTORY NOTES**

**Cross References.**

Adjutant general, § 46-111.

**Prior Laws.**

Former § 46-1104 was repealed. See Prior Laws, § 46-1101.

**Compiler's Notes.**

The term “this code” at the end of the section refers to the Idaho code of military justice, codified as § 46-1102.

**§ 46-1105. Immunity.** — All persons acting under the provisions of this chapter, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of their acts or omissions which they did or failed to do as part of their duties under this chapter.

**History.**

I.C., § 46-1105, as added by 2015, ch. 268, § 2, p. 1078.

**STATUTORY NOTES**

**Prior Laws.**

Former § 46-1105 was repealed. See Prior Laws, § 46-1101.

**§ 46-1106. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

**History.**

I.C., § 46-1106, as added by 2015, ch. 268, § 2, p. 1078.

**STATUTORY NOTES**

**Prior Laws.**

Former § 46-1106 was repealed. See Prior Laws, § 46-1101.

**Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 2015, Chapter 268, which is codified as § 46-1101 et seq. The reference probably should be to “this chapter,” being chapter 11, title 46, Idaho Code.





## Chapter 12

# STATEWIDE COMMUNICATIONS INTEROPERABILITY

Sec.

46-1201 — 46-1212. [Repealed.]

**§ 46-1201. Definitions. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1201, as added by 2006, ch. 292, § 1, p. 900.

**§ 46-1202. Idaho statewide interoperability executive council.  
[Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

**I.C., § 46-1202**, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 1, p. 348.

**§ 46-1203. Purpose. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

**I.C., § 46-1203**, as added by 2006, ch. 292, § 1, p. 900; am. 2007, ch. 292, § 2, p. 828; am. 2008, ch. 127, § 2, p. 348.

**§ 46-1204. Council responsibilities. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1204, as added by 2006, ch. 292, § 1, p. 900; am. 2007, ch. 292, § 3, p. 828; am. 2008, ch. 127, § 3, p. 348; am. 2012, ch. 195, § 2, p. 525.

**§ 46-1205. Rules. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1205, as added by 2006, ch. 292, § 1, p. 900.

**§ 46-1206. Idaho statewide interoperability executive council communications fund — Establishment and administration.  
[Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

**I.C., § 46-1206**, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 4, p. 349.

**§ 46-1207. Administrative support. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

**I.C., § 46-1207**, as added by 2006, ch. 292, § 1, p. 900; am. 2008, ch. 127, § 5, p. 349; am. 2012, ch. 195, § 3, p. 525.



**§ 46-1208. Meetings. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1208, as added by 2006, ch. 292, § 1, p. 900.

**§ 46-1209. Chair and vice-chair. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1209, as added by 2006, ch. 292, § 1, p. 900.

**§ 46-1210. Subcommittees. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1210, as added by 2006, ch. 292, § 1, p. 900.

**§ 46-1211. Council members. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

**I.C., § 46-1211**, as added by 2006, ch. 292, § 1, p. 900; am. 2012, ch. 195, § 4, p. 525.

**STATUTORY NOTES**

**Compiler's Notes.**

S.L. 2016, ch. 118, § 20 purported to amend this section; however, S.L. 2016, ch. 127, § 11 repealed this section, effective July 1, 2016.

**§ 46-1212. Council member terms. [Repealed.]**

Repealed by S.L. 2016, ch. 127, § 11, effective July 1, 2016. For interoperable and emergency communications, see § 31-4801 et seq.

**History.**

I.C., § 46-1212, as added by 2006, ch. 292, § 1, p. 900; am. 2012, ch. 195, § 5, p. 525.

**Title 47**  
**MINES AND MINING**

Chapter

Chapter 1. Inspector of Mines. [Amended and Redesignated, Repealed.]

Chapter 2. Idaho Geological Survey, §§ 47-201 — 47-204.

Chapter 3. Oil and Gas Wells — Geologic Information, and Prevention of Waste, §§ 47-301 — 47-336.

Chapter 4. General Safety Regulations. [Repealed.]

Chapter 5. Dust Prevention. [Repealed.]

Chapter 6. Location of Mining Claims, §§ 47-601 — 47-619.

Chapter 7. Mineral Rights in State Lands, §§ 47-701 — 47-718.

Chapter 8. Oil and Gas Leases on State and School Lands, §§ 47-801 — 47-812.

Chapter 9. Rights of Way and Easements for Development of Mines, §§ 47-901 — 47-913.

Chapter 10. Mining Tunnels, §§ 47-1001 — 47-1004.

Chapter 11. Proceeding by Lienholder Upon Unpatented Mining Claim to Prevent Forfeiture, §§ 47-1101, 47-1102.

Chapter 12. License Tax for Privilege of Mining and Extracting Ores, §§ 47-1201 — 47-1208.

Chapter 13. Dredge Mining, §§ 47-1301 — 47-1324.

Chapter 14. Mineral Leases by Political Subdivisions and Municipalities, §§ 47-1401 — 47-1403.

Chapter 15. Mined Land Reclamation, §§ 47-1501 — 47-1519.

Chapter 16. Geothermal Resources, §§ 47-1601 — 47-1611.

Chapter 17. Idaho Abandoned Mine Reclamation Act, §§ 47-1701 — 47-1708.

Chapter 18. Financial Assurance, §§ 47-1801 — 47-1805.



## Chapter 1

### INSPECTOR OF MINES

Sec.

47-101, 47-102. [Amended and Redesignated.]

47-102A, 47-103. [Repealed.]

47-104 — 47-107. [Amended and Redesignated.]

47-108. Deputies — Appointment and compensation. [Repealed.]

47-109. [Amended and Redesignated.]

47-110. Duties of deputies. [Repealed.]

47-111. [Amended and Redesignated.]

47-112, 47-113. [Repealed.]

47-114, 47-115. [Amended and Redesignated.]



**§ 47-101. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-101, which comprised 1895, p. 160, §§ 1, 2, 13; reen. 1899, p. 221, §§ 1, 2, 13; compiled and reen. R.C., § 199; am. 1911, ch. 199, § 1, p. 663; reen. C. L. 228:1; C.S., § 5470; am. 1921, ch. 24, § 1, p. 32; am. 1927, ch. 131, § 1, p. 174; I.C.A., § 46-101; am. 1941, ch. 48, § 1, p. 103; am. 1945, ch. 29, § 1, p. 36; am. 1949, ch. 173, § 1, p. 370; am. 1951, ch. 25, § 1, p. 37; am. 1953, ch. 216, § 2, p. 330; am. 1957, ch. 316, § 2, p. 674; am. 1961, ch. 325, § 1, p. 617; am. 1967, ch. 126, § 1, p. 294; am. 1969, ch. 35, § 2, p. 74; am. 1971, ch. 136, § 33, p. 522, was amended and redesignated as § 44-112 by S.L. 1974, ch. 39, § 13. Section 44-112 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-102. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-102, which comprised 1893, p. 152, § 2; am. 1895, p. 160, § 2; reen. 1899, p. 221, § 3; reen. R.C., § 200; reen. C.L. 228:2; C.S., § 5471; I.C.A., § 46-102; am. 1969, ch. 35, § 3, p. 74, was amended and redesignated as § 44-113 by S.L. 1974, ch. 39, § 14. Section 44-113 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-102A. Definition of the term “mine.” [Repealed.]**

**STATUTORY NOTES**

**Compiler’s Notes.**

This section, which comprised **I.C., § 47-102A** as added by 1969, ch. 35, § 4, p. 74, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-103. Duties in general. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1893, p. 152, § 4; am. 1895, p. 160, § 3; reen. 1899, p. 221, § 4; reen. R.C., § 201; C.L. 228:3; C.S., § 5472; I.C.A., § 46-103; am. 1935, ch. 64, § 1, p. 118; am. 1951, ch. 211, § 1, p. 439; am. 1967, ch. 177, § 1, p. 588; am. 1969, ch. 35, § 5, p. 74, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-104. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-104, which comprised 1893, p. 152, § 5; am. 1895, p. 160, § 4; reen. 1899, p. 221, § 5; reen. R.C., § 202; reen. C.L. 228:4; C.S. § 5473; I.C.A., § 46-104; am. 1951, ch. 211, § 2, p. 439; am. 1969, ch. 35, § 6, p. 74, was amended and redesignated as § 44-109 by S.L. 1974, ch. 39, § 10. Section 44-109 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-105. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-105, which comprised 1893, p. 152, § 6; am. 1895, p. 160, § 5; reen. 1899, p. 221, § 6; reen. R.C., § 203; reen. C.L. 228:5; C.S., § 5474; I.C.A., § 46-105; am. 1969, ch. 35, § 7, p. 74, was amended and redesignated as § 44-115 by S.L. 1974, ch. 39, § 16. Section 44-115 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-106. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-106, which comprised 1893, p. 152, § 7; am. 1895, p. 160, § 6; reen. 1899, p. 221, § 7; reen. R.C., § 204; reen. C.L. 228:6; C.S., § 5475; I.C.A., § 44-106; am. 1969, ch. 35, § 8, p. 74, was amended and redesignated as § 44-110 by S.L. 1974, ch. 39, § 11. Section 44-110 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-107. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-107, which comprised 1893, p. 152, § 9; am. 1895, p. 160, § 8; reen. 1899, p. 221, § 8; reen. R.C., § 205; C.L. 228:7; C.S., § 5476; I.C.A., § 46-107; am. 1969, ch. 35, § 9, p. 74, was amended and redesignated as § 44-111 by S.L. 1974, ch. 39, § 12. Section 44-111 was subsequently repealed by S.L. 1980, ch. 117, § 3.



**§ 47-108. Deputies — Appointment and compensation. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1895, p. 160, § 9; reen. 1899, p. 221, § 9; reen. R.C., § 206; reen. C.L. 228:8; C.S., § 5477; I.C.A., § 46-108; am. 1949, ch. 162, § 1, p. 351; am. 1967, ch. 177, § 2, p. 588, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-109. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-109, which comprised 1895, p. 160, § 10; reen. R.C., § 207; reen. C.L. 228:9; C.S., § 5478; I.C.A., § 46-109, was amended and redesignated as § 44-114 by S.L. 1974, ch. 39, § 15. Section 44-114 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-110. Duties of deputies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1895, p. 160, § 11; reen. 1899, p. 221, § 11; reen. R.C., § 208; reen. C.L. 228:10; C.S., § 5479; I.C.A., § 46-110; am. 1951, ch. 26, § 1, p. 38, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-111. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-111, which comprised 1895, p. 160, § 12; reen. 1899, p. 221, § 12; compiled and reen. R.C., § 209; C.L. 228:11; C.S., § 5480; I.C.A., § 46-111; am. 1969, ch. 35, § 10, p. 74, was amended and redesignated as § 44-116 by S.L. 1974, ch. 39, § 17. Section 44-116 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-112. Mineral exhibit — Duties of inspector. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 47-112** as added by 1969, ch. 35, § 12, p. 74, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-113. Federal aid. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 47-113** as added by 1969, ch. 35, § 13, p. 74, was repealed by S.L. 1974, ch. 39, § 1.

**§ 47-114. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-114, which comprised 1969, ch. 186, § 1, p. 551, was amended and redesignated as § 44-117 by S.L. 1974, ch. 39, § 18. Section 44-117 was subsequently repealed by S.L. 1980, ch. 117, § 3.

**§ 47-115. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-115, which comprised 1969, ch. 186, § 2, p. 551, was amended and redesignated as § 44-118 by S.L. 1974, ch. 39, § 19. Section 44-118 was subsequently repealed by S.L. 1980, ch. 117, § 3.





## Chapter 2

### IDAHO GEOLOGICAL SURVEY

Sec.

47-201. Geological survey created — Purpose — Advisory board.

47-202. Meetings — Office — State geologist.

47-203. Duties — Publications — Cooperation with other agencies —  
Satellite offices.

47-204. Reports.

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### STATUTORY NOTES

#### **Compiler's Notes.**

Section 14 of S.L. 2009, ch. 11, rewrote the chapter heading which formerly read "Bureau of mines and geology".

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**§ 47-201. Geological survey created — Purpose — Advisory board.**

— There is hereby created the Idaho geological survey, to be administered as a special program at the university of Idaho under the authority of the board of regents of the university of Idaho. The survey shall be the lead state agency for the collection, interpretation, and dissemination of geologic and mineral data for Idaho. Such information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies. There is hereby established an advisory board for the survey, consisting of the following members: The director of the survey and board chairperson (nonvoting); the chair of the department of geosciences at Boise state university; the chair of the department of geosciences at Idaho state university; the chair of the department of geological sciences at the university of Idaho; a representative from the mining and mineral processing industry selected by the director; the governor of the state of Idaho or his designated representative; a member of the board of land commissioners or their designated representative; the president or his designee of the Idaho association of professional geologists; and two (2) members at large selected by the director from other state or federal organizations, or from the private sector with a direct interest in the survey's programs, both serving two (2) year staggered terms; all of whom shall serve as members of the said board and shall be compensated as provided by [section 59-509\(b\), Idaho Code](#).

**History.**

1919, ch. 54, § 1, p. 163; C.S., § 5481; I.C.A., § 46-201; am. 1933, ch. 22, § 1, p. 29; am. 1974, ch. 17, § 26, p. 308; am. 1980, ch. 247, § 45, p. 582; am. 1984, ch. 101, § 1, p. 229; am. 2003, ch. 46, § 1, p. 174; am. 2010, ch. 67, § 1, p. 116.

**STATUTORY NOTES**

**Cross References.**

Board of land commissioners, Idaho [Const., Art. IX, § 7](#) and [§ 58-101 et seq.](#)

Board of regents, § 33-2804.

Practical prospecting and practical mining courses at University of Idaho, § 33-2815.

**Amendments.**

The 2010 amendment, by ch. 67, substituted “or their designated representatives” for “designated by the state land board” in the last sentence.

**§ 47-202. Meetings — Office — State geologist.** — The advisory board shall hold an annual meeting at the university of Idaho, Boise state university or Idaho state university and such other meetings as it may determine. The chief office of said survey shall be maintained at the university of Idaho. The director of the survey shall report to the president of the university of Idaho through the vice president for research at the university of Idaho. The director, or a professional geologist in the survey if so appointed by the director, is designated state geologist.

**History.**

1919, ch. 54, § 2, p. 163; C.S., § 5482; I.C.A., § 46-202; am. 1974, ch. 17, § 27, p. 308; am. 1984, ch. 101, § 2, p. 229; am. 2003, ch. 46, § 2, p. 174.

**§ 47-203. Duties — Publications — Cooperation with other agencies — Satellite offices.** — It shall be the duty of the said state survey to conduct statewide studies in the field; laboratory studies; prepare and publish reports on the geology, hydrogeology, geologic hazards and mineral resources of the state; fix a price upon printed reports not used in exchange with other state bureaus or surveys, universities or public libraries, and deposit receipts from sales in a printing fund to be used for the preparation and publication of reports of the survey, and for no other purpose. The survey shall be allowed to seek and accept funded projects from and cooperative programs with other agencies for support of the survey's research and service activities as authorized by the board of regents. All funds received from these projects shall be used for said projects and services. The survey shall be allowed to have satellite offices at the geology departments of Boise state university and Idaho state university.

**History.**

1919, ch. 54, § 3, p. 163; C.S., § 5483; I.C.A., § 46-203; am. 1933, ch. 22, § 2, p. 29; am. 1974, ch. 17, § 28, p. 308; am. 1984, ch. 101, § 3, p. 229; am. 2003, ch. 46, § 3, p. 174.

**STATUTORY NOTES**

**Cross References.**

Board of regents, § 33-2804.

**Effective Dates.**

Section 4 declared an emergency. Approved Feb. 2, 1933.

**§ 47-204. Reports.** — The state geological survey shall annually, on or before the first day of January, make to the governor of the state and to the president of the university of Idaho a report detailing major events during the previous year concerning the geology and mineral resources of the state, a report of its expenditures and of the work of said survey during the preceding year, and budget requests for the following year; and it shall make a similar report of its doings and its expenditures to the state legislature through the legislative council.

**History.**

1919, ch. 54, § 5, p. 164; C.S., § 5484; I.C.A., § 46-204; am. 1974, ch. 17, § 29, p. 308; am. 1984, ch. 101, § 4, p. 229.

**STATUTORY NOTES**

**Cross References.**

Legislative council, § 67-427 et seq.

**Effective Dates.**

Section 6 of S.L. 1919, ch. 54 declared an emergency. Approved March 14, 1919.

Section 75 of S.L. 1974, ch. 17, provided that the act should take effect on and after July 1, 1974.





Chapter 3  
OIL AND GAS WELLS — GEOLOGIC INFORMATION,  
AND PREVENTION OF WASTE

Sec.

47-301 — 47-305. [Repealed.]

47-306. Preservation and use of samples and records — Reports of determinations and identifications.

47-307. Use of information.

47-308. Conditions for publication of information. [Repealed.]

47-309. Title.

47-310. Definitions.

47-311. Public interest.

47-312. Act not construed to restrict production — Waste prohibited.

47-313. Lands subject to this act.

47-314. Oil and gas conservation commission created — Powers — Limit on local restrictions — Attorney general.

47-315. Authority of commission.

47-316. Permit to drill or treat a well — Fees.

47-317. Drilling locations.

47-318. Well spacing.

47-319. Setbacks.

47-320. Integration of tracts — Orders of department.

47-321. Unit operations.

47-322. Oil and gas metering systems.

47-323. Commingling of production.

47-324. Reporting requirements.

47-325. Falsification of records — Limitation of actions.

47-326. Public data.

47-327. Confidentiality of well and trade information.

47-328. Rules for commission — Administrative procedures.

47-329. Powers of commission — Witnesses — Penalty.

47-330. Oil and gas conservation fund created — Tax.

47-331. Obligation to pay royalties as essence of contract — Interest.

47-332. Reports to royalty owners.

47-333. Action for accounting for royalty.

47-334. Use of surface land by owner or operator.

47-335. Producers — Monthly statements — Idaho state tax commission.

47-336. Interstate compact for conservation of oil and gas ratified.

**§ 47-301 — 47-305. Geological information — Log drilling operations — Certified copy of log — Filing — Sample of minerals and formations penetrated — Information and reports confidential — Application for forms and containers. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

These sections, which comprised S.L. 1931, ch. 115, §§ 1 to 5, p. 196; I.C.A., §§ 46-301 to 46-305, were repealed by S.L. 1963, ch. 148, § 18.

**§ 47-306. Preservation and use of samples and records — Reports of determinations and identifications.** — The Idaho geological survey shall preserve any samples or records deposited with it pertaining to mineral, oil or gas resources, exploration or production on lands within the state. The Idaho geological survey may use such samples or records to assist with mineral and petroleum assessments and characterization of geologic resources as part of its mission and directive to determine the geology, hydrogeology, geologic hazards, and mineral, oil and gas resources of the state. On request, the Idaho geological survey shall supply to the owner or owners of the samples or records a report of any such determinations and identifications specific to the samples or records provided by the owner or owners of the samples or records.

**History.**

1931, ch. 115, § 6, p. 196; I.C.A., § 46-306; am. 2009, ch. 11, § 15, p. 14; am. 2016, ch. 194, § 1, p. 541.

**STATUTORY NOTES**

**Cross References.**

Idaho geological survey, § 47-201 et seq.

**Amendments.**

The 2009 amendment, by ch. 11, substituted “The Idaho geological survey” for “The bureau of mines and geology.”

The 2016 amendment, by ch. 194, rewrote the section heading and the section, which formerly read: “Records of logs — Classification of rocks, fossils, and minerals — Reports to authorized persons. The Idaho geological survey shall preserve orderly records of logs filed with it and shall determine and record and classify rocks shown by samples, identify fossils and minerals, and, on request, shall supply to the properly authorized person, connected with the drilling operations from which logs and samples are received a report of such determinations and identifications.”

**§ 47-307. Use of information.** — The Idaho geological survey is hereby authorized to utilize in its study of regional geology, mineral deposits, industrial minerals and aggregates, oil and gas resources, and groundwater resources, in its dissemination of geological and mineral data, and in its publication of reports and maps on the geology and mineral resources of the state, any information derived from samples and records deposited with it. The Idaho geological survey shall not disclose any record, or any information contained therein, if the record or information is exempt from disclosure under the Idaho public records act, chapter 1, title 74, Idaho Code, or is subject to a confidentiality agreement between the Idaho geological survey and the owner or owners of the records or information. Should a confidentiality or data-sharing agreement exist, the terms of that agreement shall control any disclosure by the Idaho geological survey. For information that becomes publicly available or that is not exempt from disclosure under the Idaho public records act, the existence of a confidentiality or data-sharing agreement will not extend the period of confidentiality beyond that available under the Idaho public records act. Subject to any confidentiality or data-sharing agreement, the Idaho geological survey is authorized to share such records or information obtained under [section 47-306, Idaho Code](#), or information derived therefrom, with the Idaho oil and gas conservation commission and the Idaho department of lands, in furtherance of the respective authorized functions of the commission and the Idaho department of lands. The sharing of information between the Idaho geological survey, the oil and gas conservation commission and the Idaho department of lands shall not render the shared information subject to disclosure to other persons under the Idaho public records act.

### **History.**

1931, ch. 115, § 7, p. 196; I.C.A., § 46-307; am. 2009, ch. 11, § 16, p. 14; am. 2016, ch. 194, § 2, p. 541.

## **STATUTORY NOTES**

### **Cross References.**

Idaho department of lands, § 58-101 et seq.

Idaho geological survey, § 47-201 et seq.

Oil and gas conservation commission, § 47-314.

**Amendments.**

The 2009 amendment, by ch. 11, substituted “The Idaho geological survey” for “The bureau of mines and geology.”

The 2016 amendment, by ch. 194, rewrote the section, which formerly read: “The Idaho geological survey is hereby authorized to utilize in its study of regional rock structures, mineral deposits, and underground water resources, the information so derived”.

Idaho Code § 47-308

**§ 47-308. Conditions for publication of information. [Repealed.]**

Repealed by S.L. 1963, ch. 148, § 1.

**History.**

1931, ch. 115, § 8,, p. 196; I.C.A., § 46-308.

**§ 47-309. Title.** — This act may be cited as the Oil and Gas Conservation Act.

**History.**

1963, ch. 148, § 16, p. 433; am. and redesign. 2017, ch. 271, § 1, p. 677.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 47-309 to 47-314, which comprised S.L. 1931, ch. 115, § 9, p. 196; 1931, ch. 111, §§ 1 to 5, p. 191; I.C.A., §§ 46-309 to 46-314, were repealed by S.L. 1963, ch. 148, § 18.

**Amendments.**

The 2017 amendment, by ch. 271, redesignated the section from § 47-329.

**Compiler's Notes.**

The term “this act” refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.



**§ 47-310. Definitions.** — Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this act. The use of the plural includes the singular, and the use of the singular includes the plural.

(1) “Commission” means the oil and gas conservation commission.

(2) “Confidential well status” refers to a well for which the operator has applied and received confidential status from the commission pursuant to [section 47-327, Idaho Code](#). Information about a confidential well is exempt from disclosure as to the public, but not with regard to the commission or other state authority.

(3) “Condensate” means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir.

(4) “Correlative rights” means the opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste.

(5) “Department” means the Idaho department of lands.

(6) “End purchaser” means a third-party, arms-length purchaser of oil, gas or condensate that is ready for refining or other use, or a third-party, arms-length purchaser of other fluid or gaseous hydrocarbons that have been separated in a processing facility.

(7) “Exploration” means activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. The activities related to the search for oil and gas include without limitation aerial, geological and geophysical surveys and studies, seismic work, core drilling and the drilling of test wells.

(8) “Field” means the general area underlaid by one (1) or more pools.

(9) “Gas” means natural gas, which is a mixture of hydrocarbons and varying quantities of non-hydrocarbons that exist either in the gaseous phase or in solution with crude oil in natural underground reservoirs.

(10) “Gathering facility” means a facility that receives gathering lines from wells, commingles the produced materials, and then sends those

materials to a processing facility.

(11) “Market value” means the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil and gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the severance tax directly or indirectly.

(12) “MCF” means one thousand cubic feet of gas.

(13) “Mineral interest” means the right to explore, drill or produce oil and gas lying beneath the surface of property.

(14) “Natural gas liquids” means hydrocarbons that are gaseous in the reservoir, but will separate out in liquid form at the pressures and temperatures at which separators normally operate. The liquids consist of varying proportions of butane, propane, pentane and heavier fractions, with little or no methane or ethane.

(15) “Natural gas plant liquids” means hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Natural gas plant liquids obtained include ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed.

(16) “Occupied structure” means a building with walls and a roof within which individuals live or customarily work.

(17) “Oil” means and includes crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas.

(18) “Oil and gas” means oil or gas or both. “Oil and gas” refers not only to oil and gas in combination with each other but also generally to oil, gas, casinghead gas, casinghead gasoline, gas-distillate or other hydrocarbons, or any combination or combinations thereof, which may be found in or

produced from a common source or supply of oil, oil and gas, or gas-distillate.

(19) “Oil and gas administrator” means the division administrator for oil and gas conservation within the department of lands, as established under [section 58-104A, Idaho Code](#).

(20) “Oil and gas facility” means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or natural gas.

(21) “Oil and gas operations” means operations to explore for, develop or produce oil and gas.

(22) “Operator” means any duly authorized person who is in charge of the development of a lease, pool, or spacing or unitized area, or the operation of a producing well.

(23) “Owner” means the person who has the right to drill into and produce from a pool and to appropriate the oil and gas that he produces therefrom, either for himself or for himself and others.

(24) “Person” means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.

(25) “Pool” means an underground reservoir containing a common accumulation of oil and gas. Each zone of a structure that is completely separated from any other zone in the same structure is a pool.

(26) “Processing facility” means a facility that refines gas and liquid hydrocarbons.

(27) “Producer” means the owner of a well or wells capable of producing oil and gas.

(28) “Reservoir” means a subsurface volume of porous and permeable rock in which oil and gas may have accumulated.

(29) “Royalty owner” means any owner of an interest in an oil and gas lease that entitles him to share in the production of the oil and gas under the

lease.

(30) “Tract” means an expanse of land representing the surface expression of the underlying mineral estate that includes oil and gas rights. A tract:

- (a) May be identified by its public land survey system of rectangular surveys that subdivides and describes land in the United States in the public domain and is regulated by the United States department of the interior, bureau of land management;
- (b) Is of no particular size;
- (c) May be irregular in form;
- (d) Is contiguous;
- (e) May lie in more than one (1) township or one (1) section;
- (f) May have a boundary defined entirely or in part by natural monuments such as streams, divides or straight lines connecting prominent features of topography; and
- (g) May be combined with other tracts to form a lease.

(31) “Uncommitted owner” means one who is not leased or otherwise contractually obligated to the operator.

(32) “Waste” as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil and gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

(33) “Waste” as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer’s above-ground storage facilities and lease and contractual requirements, but

excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil and gas ultimately recoverable from a pool under prudent and proper operations.

(34) “Workover” means an operation in which a well is reentered for the purpose of maintaining or repairing it.

### **History.**

1963, ch. 148, § 4, p. 433; am. 2012, ch. 73, § 1, p. 209; am. 2015, ch. 89, § 1, p. 223; am. 2016, ch. 48, § 2, p. 129; am. and redesign. 2017, ch. 271, § 2, p. 677.

## **STATUTORY NOTES**

### **Cross References.**

Idaho department of lands, § 58-101 et seq.

Oil and gas conservation commission, § 47-314.

### **Prior Laws.**

Former § 47-310 was repealed. See Prior Laws, § 47-309.

### **Amendments.**

The 2012 amendment, by ch. 73, rewrote and alphabetized the definitions.

The 2015 amendment, by ch. 89, added “including condensate because it originally existed in the gaseous phase” at the end of subsection (e).

The 2016 amendment, by ch. 48, rewrote subsection (c), which formerly read: “‘Correlative rights’ means the owners’ or producers’ just and equitable share in a pool”; added subsections (d), (h), (k), and (q) and redesignated the remaining subsections accordingly.

The 2017 amendment, by ch. 271, redesignated the section from § 47-318 and rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler's Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho's Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-311. Public interest.** — It is declared to be in the public interest to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the state of Idaho in such a manner as will prevent waste; to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho; to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize and provide for voluntary agreements for cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources.

### **History.**

1963, ch. 148, § 1, p. 433; am. 2012, ch. 111, § 1, p. 302; am. and redesign. 2017, ch. 271, § 3, p. 677.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 47-311 was repealed. See Prior Laws, § 47-309.

### **Amendments.**

The 2012 amendment, by ch. 111, inserted “to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho” near the beginning of the section.

The 2017 amendment, by ch. 271, redesignated the section from § 47-315.

### **Compiler’s Notes.**

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this

act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **OPINIONS OF ATTORNEY GENERAL**

### **Local Regulations.**

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Common Law Aspects of Shale Oil and Gas Development, Christopher S. Kulander. 49 Idaho L. Rev. 367 (2013).

A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).



**§ 47-312. Act not construed to restrict production — Waste prohibited.** — It is not the intent or purpose of this law to require the proration or distribution or the production of oil and gas among the fields of Idaho on the basis of market demand. This act shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, regulation or judgment requiring restriction of production due to market demand of any pool or of any well (except as provided in [section 47-315, Idaho Code](#), hereof) to an amount less than the well or pool can produce without waste in accordance with sound engineering practices. The waste of oil and gas or either of them as defined in this chapter is hereby prohibited.

**History.**

1963, ch. 148, § 14, p. 433; am. 2012, ch. 73, § 5, p. 209; am. and redesign. 2017, ch. 271, § 4, p. 677.

**STATUTORY NOTES**

**Prior Laws.**

Former § 47-312 was repealed. See Prior Laws, § 47-309.

**Amendments.**

The 2012 amendment, by ch. 73, inserted “due to market demand” near the middle of the second sentence.

The 2017 amendment, by ch. 271, redesignated the section from § 47-328, inserted “Waste prohibited” in the section heading, substituted “[section 47-315, Idaho Code](#)” for “[section 47-319, Idaho Code](#)” near the end of the second sentence, and added the last sentence.

**Compiler’s Notes.**

The terms “this law” in the first sentence and this act” at the beginning of the second sentence refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-

330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 15 of S.L. 1963, ch. 148 provided “If any section, subsection, sentence, clause, phrase or word of this Act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this Act. The legislature hereby declares that it would have passed this Act and each division, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words might be adjudged to be unconstitutional or for any other reason invalid.”

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

The words enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-313. Lands subject to this act.** — This act shall apply to all lands located in the state, however owned, including any lands owned or administered by any government or any agency or political subdivision thereof, including lands of the United States, or lands subject to the jurisdiction of the United States over which the state of Idaho has police power, except to the degree that it is inharmonious with the uses, activities or regulations of the United States, and furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the commission may, with respect to such unit agreement, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished under such unit agreements, but such suspension shall not relieve any operator from making such reports as may be required by the commission with respect to operations under any such unit agreement.

**History.**

1963, ch. 148, § 13, p. 433; am. and redesign. 2017, ch. 271, § 5, p. 677.

**STATUTORY NOTES**

**Prior Laws.**

Former § 47-313 was repealed. See Prior Laws, § 47-309.

**Amendments.**

The 2017 amendment, by ch. 271, redesignated the section from § 47-327 and substituted “all lands located in the state, however owned, including any lands owned or administered by any government or any agency or political subdivision thereof, including lands” for “all lands in the state of Idaho lawfully subject to its police power, and shall apply to lands” near the beginning of the section.

**Compiler’s Notes.**

The term “this act” in the section heading and throughout the section refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316,

47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-314. Oil and gas conservation commission created — Powers — Limit on local restrictions — Attorney general.** — (1) There is hereby created an oil and gas conservation commission of the state of Idaho within the department of lands. The commission shall consist of the director of the department of lands, a county commissioner as described in this section, and three (3) members appointed by the governor with the advice and consent of the senate.

(a) The county commissioner shall be from a county where oil and gas are being produced or have been produced within the last ten (10) years and shall be elected by a majority of the county commissioners from such producing counties. The county commissioner shall serve a four (4) year term. A vacancy shall be filled by election for the unexpired term in the same manner provided for election to a full term.

(b) The members appointed by the governor shall serve at the pleasure of the governor and shall have a college degree in geosciences or engineering and at least ten (10) years of experience in the oil and gas industry. The governor shall appoint the three (3) technical expert members: one (1) member for a term of four (4) years, one (1) member for a term of three (3) years, and one (1) member for a term of two (2) years. Thereafter, the term of office of each appointed member of the commission shall be four (4) years. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term.

(2) On July 1, 2017, the terms of the existing members of the commission appointed under this section shall terminate, with the sole exception that such commission shall decide any administrative actions filed prior to July 1, 2017. Actions filed on and after July 1, 2017, shall be decided by the new commission established under this section.

(3) The commission shall annually elect a chairman and a vice chairman from their membership. Such officers shall hold their respective offices until their successors are elected. If a vacancy occurs in either office, the commission shall elect a member to fill such office for the remainder of the term.

(4) The commission shall meet at least annually and thereafter on dates set by the commission. A majority of the members shall constitute a quorum.

(5) The members of the commission appointed by the governor or selected by the county commissioners shall be compensated as provided in [section 59-509\(n\), Idaho Code](#).

(6) The oil and gas administrator of the department of lands shall be the secretary for the commission.

(7) The department of lands shall have the power to exercise, under the general control and supervision of the commission, all of the rights, powers and duties vested by law in the commission, except those provided in sections 47-328 and 47-329(3), Idaho Code.

(8) The commission shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act, and shall have power and authority to make and enforce rules, regulations and orders, and do whatever may reasonably be necessary to carry out the provisions of this act. Any delegation of authority to any other state officer, board or commission to administer any and all other laws of this state relating to the conservation of oil and gas is hereby rescinded and withdrawn and such authority is hereby unqualifiedly conferred upon the commission, as herein provided. The commission shall follow procedures on applications as provided in [section 47-328, Idaho Code](#), except as provided in sections 47-316(1)(a) and 47-329(3), Idaho Code.

(9) It is the intent of the legislature to occupy the field of the regulation of oil and gas exploration and production with the limited exception of the exercise of planning and zoning authority granted cities and counties pursuant to chapter 65, title 67, Idaho Code.

(10) To implement the purpose of the oil and gas conservation act, and to advance the public interest in the orderly development of the state's oil and gas resources, while at the same time recognizing the responsibility of local governments to protect the public health, safety and welfare, it is herein provided that:

(a) The commission will notify the respective city or county with jurisdiction upon receipt of an application and will remit, electronically, a copy of all application materials.

(b) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit the extraction of oil and gas; provided however, that extraction may be subject to reasonable local ordinance provisions, not repugnant to law, which protect public health, public safety, public order or which prevent harm to public infrastructure or degradation of the value, use and enjoyment of private property. Any ordinance regulating extraction enacted pursuant to chapter 65, title 67, Idaho Code, shall provide for administrative permitting under conditions established by ordinance, not to exceed twenty-one (21) days, unless extended by agreement of the parties or upon good cause shown.

(c) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit construction or operation of facilities and infrastructure needed for the post-extraction processing and transport of gas and oil. However, such facilities and infrastructure shall be subject to local ordinances, regulations and permitting requirements, not repugnant to law, as provided in chapter 65, title 67, Idaho Code.

(11) The commission may sue and be sued in its administration of this act in any state or federal district court in the state of Idaho having jurisdiction of the parties or of the subject matter.

(12) The attorney general shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it, and in any proceeding to which the commission may be a party before any department of the federal government. The commission may retain additional counsel to assist the attorney general and, for such purpose, may employ any funds available under this act.

### **History.**

1963, ch. 148, § 3, p. 433; am. 1974, ch. 17, § 30, p. 308; am. 2012, ch. 111, § 2, p. 302; am. 2013, ch. 189, § 1, p. 467; am. 2014, ch. 56, § 1, p.

133; am. 2015, ch. 102, § 1, p. 244; am. 2016, ch. 48, § 1, p. 129; am. and redesign. 2017, ch. 271, § 6, p. 677.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Director of department of lands, § 58-105.

Oil and gas conservation act, § 47-309 and notes thereto.

### **Prior Laws.**

Former § 47-314 was repealed. See Prior Laws, § 47-309.

### **Amendments.**

The 2012 amendment, by ch. 111, inserted “Limit on local restrictions” into the section heading; redesignated former subsections (a) and (b) as subsections (1) and (2) and former subsections (c) and (d) as subsections (5) and (6); and added subsections (3) and (4)

The 2013 amendment, by ch. 189, in subsection (1), deleted “which shall consist of the state board of land commissioners” at the end of the first sentence and added the second through fourth sentences; added present subsections (2) through (7), and redesignated former subsections (2) through (7) as present subsections (8) through (12); and added the last sentence in subsection (8).

The 2014 amendment, by ch. 56, added “within the department of lands” at the end of the first sentence in subsection (1).

The 2015 amendment, by 102, added the last sentence in subsection (8).

The 2016 amendment, by ch. 48, rewrote subsection (7), which formerly read: “The commission may employ personnel as may be deemed necessary, prescribe their duties and fix their compensation. In the alternative, the commission may contract with the department of lands for services”; in subsection (8), deleted the former last three sentences which read: “Any person, or the attorney general, on behalf of the state, may apply for a hearing before the commission, or the commission may initiate proceedings, upon any question relating to the administration of this act,



and jurisdiction is hereby conferred upon the commission to hear and determine the same and enter its rule, regulation or order with respect thereto. The commission may designate hearing officers who shall have the power and authority to conduct hearings in the name of the commission at any time and place in accordance with the provisions of chapter 52, title 67, Idaho Code. Provided however, that when the commission is exercising its duties and authorities granted under this chapter, such actions shall not be considered to be contested cases as defined in subsection (6) of [section 67-5201, Idaho Code](#), and [section 67-5240, Idaho Code](#), unless the commission, in its discretion, determines that a contested case hearing would be of assistance to the commission in the exercise of its duties and authorities” and added the present last sentence.

The 2017 amendment, by ch. 271, redesignated the section from § 47-317; rewrote subsections (1) and (2), which formerly read: “(1) There is hereby created an oil and gas conservation commission of the state of Idaho within the department of lands. The commission shall consist of five (5) members appointed by the governor with the advice and consent of the senate. The members shall serve at the pleasure of the governor. One (1) member shall be knowledgeable in oil and gas matters, one (1) member shall be knowledgeable in geological matters, one (1) member shall be knowledgeable in water matters, one (1) member shall be a private landowner who owns mineral rights with the surface in a county with oil and gas activity and one (1) member shall be a private landowner who does not own mineral rights. (2) The term of office of each member of the commission shall be four (4) years, except that upon July 1, 2013, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years and two (2) members for terms of four (4) years. After the initial appointment, the governor shall appoint members to serve in office for a term of four (4) years commencing on July 1. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term”; inserted “appointed by the governor or elected by the county commissioners” near the beginning of subsection (5); rewrote subsection (6), which formerly read: “Unless the commission appoints another person to be the secretary of the commission, the director of the department of lands shall be the secretary of the commission”; substituted “sections 47-328 and 47-329(3), Idaho Code” for “sections 47-

324 and 47-325(c), Idaho Code” at the end of subsection (7); substituted “**section 47-328, Idaho Code**, except as provided in sections 47-316(1)(a) and 47-329(3), Idaho Code” for “**section 47-324, Idaho Code**, except as provided in sections 47-320(1)(a) and 47-325(c), Idaho Code” at the end of subsection (8); in subsection (10), substituted “will notify” for “will notice” near the beginning of paragraph (a); and added the last sentence in subsection (12).

### **Compiler’s Notes.**

The term “this act” in subsections (8), (11) and (12) refer to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

### **Effective Dates.**

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

## **OPINIONS OF ATTORNEY GENERAL**

### **Local Regulations.**

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-315. Authority of commission.** — (1) The commission is authorized and it is its duty to regulate the exploration for and production of oil and gas, prevent waste of oil and gas and to protect correlative rights, and otherwise to administer and enforce this act. It has jurisdiction over all persons and property necessary for such purposes. In the event of a conflict, the duty to prevent waste is paramount.

(2) The commission and the department shall protect correlative rights by administering the provisions of this chapter in such a manner as to avoid the drilling of unnecessary wells or incurring unnecessary expense, and in a manner that allows all operators and royalty owners a fair and just opportunity for production and the right to recover, receive and enjoy the benefits of oil and gas or equivalent resources, while also protecting the rights of surface owners.

(3) The commission is authorized to make such investigations as it deems proper to determine whether action by the commission in discharging its duties is necessary.

(4) The commission is authorized to appoint, as necessary, committees for the purpose of advising the commission on matters relating to oil and gas.

(5) Without limiting its general authority, the commission shall have the specific authority to require:

- (a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas;
- (b) The taking and preservation of samples and findings, if taken or analyzed;
- (c) The drilling, casing, operation and plugging of wells in such manner as to prevent: (i) the escape of oil and gas out of one (1) pool into another; (ii) the detrimental intrusion of water into an oil and gas pool that is avoidable by efficient operations; (iii) the pollution of fresh water supplies by oil, gas, or saltwater; (iv) blow-outs, cavings, seepages, and fires; and (v) waste as defined in [section 47-310, Idaho Code](#);

(d) The taking of tests of oil and gas wells;

(e) The furnishing of a reasonable performance bond with good and sufficient surety, conditioned upon the performance of the duty to comply with the requirements of this law and the regulations of the commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil and gas;

(f) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the commission;

(g) That wells not be operated with inefficient gas-oil or water-oil ratios, and to fix these ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios;

(h) Metering or other measuring of oil, gas, or product;

(i) That every person who produces oil and gas in the state keep and maintain for a period of five (5) years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission or its agents at all reasonable times within said period, and that every such person file with the commission such reasonable reports as it may prescribe with respect to such oil and gas production; and

(j) The filing of reports or plats with the commission that it may prescribe.

(6) Without limiting its general authority, and without limiting the authority of other state agencies or local government as provided by law, the commission shall have the specific authority to regulate:

(a) The drilling and plugging of wells and the compression or dehydration of produced oil and gas, and all other operations for the production of oil and gas;

(b) The shooting and treatment of wells;

(c) The spacing or locating of wells;

(d) Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other

substances into a producing formation; and

(e) The disposal of produced water and oil field wastes.

(7) The commission is authorized to classify and reclassify pools as oil, gas, or condensate pools, or wells as oil, gas, or condensate wells.

(8) The commission is authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.

(9) The commission shall require the department to perform the following activities on an annual basis:

(a) Inspect and report on all active well sites and equipment;

(b) Visit and file a report on production and processing facilities; and

(c) Submit an opinion as to any areas of concern, as identified on inspection reports.

### **History.**

1963, ch. 148, § 5, p. 433; am. 1990, ch. 213, § 63, p. 480; am. 2012, ch. 73, § 2, p. 209; am. 2012, ch. 111, § 3, p. 302; am. 2013, ch. 189, § 2, p. 467; am. 2015, ch. 64, § 1, p. 173; am. 2015, ch. 141, § 120, p. 379; am. 2016, ch. 47, § 21, p. 98; am. 2016, ch. 194, § 3, p. 541; am. and redesign. 2017, ch. 271, § 7, p. 677.

## **STATUTORY NOTES**

### **Cross References.**

Idaho department of lands, § 58-101 et seq.

Oil and gas conservation commission, § 47-314.

### **Amendments.**

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 73, in paragraph (d)(2), added “and shall be kept confidential by the commission for a period of one (1) year from the

date of filing the log with the commission” to the first sentence and added the second sentence; and designated the former last paragraph of subsection (d) as subsection (e), adding the words “Without limiting its general authority, the commission shall have the specific authority.”

The 2012 amendment, by ch. 111, changed the designation scheme within the section; inserted “to regulate the exploration for and production of oil and gas” in the first sentence in subsection (2); substituted “oil and gas” for “oil or gas” in paragraph (4)(i) and at the end of paragraph (5)(a); divided the last paragraph of former subsection (d) into present subsections (5) to (7), adding the introductory language in each subsection.

The 2013 amendment, by ch. 189, inserted present subsection (4), and redesignated former subsections (4) through (7) as present subsections (5) through (8).

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 64, in paragraph (5)(i), added the proviso at the end.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the first sentence of paragraph (5)(b).

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 47, substituted “74-107” for “9-340D” and “chapter 1, title 74” for “chapter 3, title 9” in paragraph (5)(i).

The 2016 amendment, by ch. 194, substituted “74-107” for “9-340D” and “chapter 1, title 74” for “chapter 3, title 9” in paragraph (5)(i) and added subsection (9).

The 2017 amendment, by ch. 271, redesignated the section from § 47-319 and rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler’s Notes.**

Former § 47-315 was amended and redesignated as § 47-311 by S.L. 2017, ch. 271, § 3, effective April 6, 2017.

The terms “this act” in subsections (1) and (8) and “this law” in paragraph (5)(e) refer to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 7 of S.L. 2012, ch. 111 declared an emergency. Approved March 23, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **OPINIONS OF ATTORNEY GENERAL**

### **Local Regulations.**

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho's Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**ALR.** — Grant, lease, exception, or reservation of oil and/or gas rights as including oil shale. [61 A.L.R.3d 1109](#).



**§ 47-316. Permit to drill or treat a well — Fees.** — (1) It shall be unlawful to commence operations for the drilling or treating of a well for oil and gas without first giving notice to the commission of intention to drill or treat and without first obtaining a permit from the commission under such rules and regulations as may be reasonably prescribed by the commission and by paying to the commission a filing and service fee as provided by this section.

(a) Any request for a permit or authorization as set forth in subsection (3)(a), (b), (c), (d), (e), (f), (g), (m), (n) or (o) of this section shall be made by application to the department of lands, and processed as provided in this section.

(b) The department shall notify the director of the department of water resources regarding applications for permits to drill or treat a well. The director of water resources shall have ten (10) business days from the date of receipt of such notification from the department of lands to recommend conditions he believes necessary to protect freshwater supplies.

(c) Applications submitted under this section, except those listed in subsection (3)(c) and (g) of this section, shall be posted on the department of lands' website for ten (10) business days for a written comment period.

(d) The department of lands shall approve or deny applications in subsection (3)(a), (b), (c), (d), (f), (g), (m), (n) and (o) of this section in a timely and efficient manner. This time frame does not apply to permits submitted with an application processed under [section 47-328, Idaho Code](#).

(e) The department's decision made under this section may be appealed to the commission by the applicant pursuant to the procedure in [section 47-328\(4\) through \(6\), Idaho Code](#).

(2) Upon issuance of any permit to drill or treat a well, a copy thereof, including any limitations, conditions, controls, rules or regulations attached thereto for the protection of freshwater supplies as required in [section 47-](#)

315, Idaho Code, shall be forwarded to the director of the department of water resources.

(3) The department shall collect the following fees, which shall be remitted to the state treasurer for deposit in the oil and gas conservation fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this chapter:

- (a) Application for a permit to drill a well ..... \$2,000
- (b) Application to deepen a well ..... 500
- (c) Application to plug and abandon a well, if not completed within one  
(1) year from issuance of permit to drill a well ..... 500
- (d) Application to treat a well, if separate from an application for a  
permit to drill a well ..... 1,000
- (e) Application to construct a pit, if separate from an application for a  
permit to drill a well ..... 1,500
- (f) Application to directionally drill a well, if separate from an  
application for a permit to drill a well ..... 1,000
- (g) Application for a recompletion, modified blow out prevention  
standards, using a vacuum for oil or gas recovery, removing casing, or  
multiple zone completion, if separate from an application for a permit to  
drill or plug and abandon a well ..... 1,000
- (h) Application for an exceptional well location, if separate from an  
application for a permit to drill a well ..... 1,300
- (i) Application to change the size, shape or location of a spacing unit  
..... 1,300
- (j) Application to establish or amend a fieldwide spacing order  
..... 1,300
- (k) Application for an integration order ..... 1,300
- (l) Application for a unitization order ..... 1,300
- (m) Application for a seismic operations permit covering less than twelve  
(12) miles of a 2-D survey ..... 800

- (n) Application for a seismic operations permit covering between twelve (12) miles and twenty-four (24) miles of a 2-D survey, or up to seventy-two (72) square miles of a 3-D survey ..... 2,000
- (o) Application for a seismic operations permit covering more than twenty-four (24) miles of a 2-D survey, or more than seventy-two (72) square miles of a 3-D survey ..... 2,500

### **History.**

1963, ch. 148, § 6, p. 433; am. 1973, ch. 255, § 1, p. 506; am. 1974, ch. 17, § 31, p. 308; am. 2012, ch. 71, § 1, p. 207; am. 2015, ch. 65, § 1, p. 174; am. 2016, ch. 48, § 3, p. 129; am. 2017, ch. 121, § 1, p. 280; am. and redesisg. 2017, ch. 271, § 9, p. 677; am. 2018, ch. 169, § 12, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

Oil and gas conservation fund, § 47-330.

State treasurer, § 67-1201 et seq.

Department of water resources, § 42-1701 et seq.

Idaho department of lands, § 58-101 et seq.

### **Prior Laws.**

Former § 47-316, Waste prohibited, which comprised 1963, ch 148, § 2, p. 433, was repealed by S.L. 2017, ch. 271, § 8, effective July 1, 2017.

### **Amendments.**

The 2012 amendment, by ch. 71, added “or treat a well” to the end of the section heading; designated the existing provisions of the section as subsection (1); inserted “or treating” and “or treat” near the beginning of the first sentence in the first paragraph of subsection (1); and added subsection (2).

The 2015 amendment, by ch. 65, in the section heading, added “fees”; in subsection (1), substituted “as provided by this section” for “of one hundred dollars (\$100) for such permit, which shall be remitted to the state treasurer for deposit in the oil and gas conservation fund and shall be used

exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this act” in the first sentence; and rewrote subsection (2), which formerly read: “The filing and service fee as provided in subsection (1) of this section shall be temporarily raised to a maximum of up to two thousand five hundred dollars (\$2,500) beginning on the effective date of this act. On and after July 1, 2017, the filing and service fee shall be reduced to one hundred dollars (\$100)”.

The 2016 amendment, by ch. 48, deleted the former last sentence of the first paragraph in subsection (1), which read: “No permit may be issued by the commission until the commission shall notify the director of the department of water resources and said director shall have fifteen (15) days from the date of receipt of such notification from the commission to recommend conditions he believes necessary to protect fresh water supplies”; added paragraphs (1)(a) through (1)(f); designated the former second paragraph in former subsection (1) as subsection (2); redesignated former subsection (2) as subsection (3); and substituted “department” for “commission” in the introductory paragraph of subsection (3).

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 121, deleted former paragraph (1)(b), which read: “The department shall notify the applicant within five (5) business days of receipt of an application if the application is administratively incomplete, and in such notice shall identify missing items to be supplied in order to make the application complete,” redesignated former paragraphs (1)(c) through (1)(f) as present paragraphs (1)(b) through (1)(e), inserted “applications for” in the first sentence of present paragraph (1)(b), in present paragraph (1)(c), inserted the exception and substituted “business days” for “calendar dates,” in present paragraph (1)(d), rewrote the first sentence, which formerly read: “The department of lands shall approve or deny the application to drill or treat a well within fifteen (15) business days of receipt of a complete application” and added the second sentence; inserted “to drill or treat a well” in subsection (2); and rewrote the text in paragraph (3)(g), which formerly read: “Application for a multiple zone completion, if separate from an application for a permit to drill a well”.

The 2017 amendment, by ch. 271, redesignated the section from § 47-320 and in subsection (1), substituted “oil and gas” for “oil or gas” near the beginning of the introductory paragraph, substituted “in a timely and efficient manner” for “within fifteen (15) business days of receipt of a complete application” at the end of paragraph (e), and substituted “[section 47-328\(4\) through \(7\), Idaho Code](#)” for “section 47-324(d), (e), (f) and (g), Idaho Code” at the end of paragraph (f); substituted “[section 47-315, Idaho Code](#)” for “[section 47-319, Idaho Code](#)” near the end of subsection (2); and in subsection (3), and substituted “size, shape or location” for “size or shape” in paragraph (i).

The 2018 amendment, by ch. 169, substituted “47-328” for “47-324” near the end of paragraph (1)(d).

### **Compiler’s Notes.**

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 2 of S.L. 2012, ch. 71 declared an emergency. Approved March 20, 2012.

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-317. Drilling locations.** — (1) To prevent or assist in preventing the waste of oil and gas, to avoid drilling unnecessary wells or to protect correlative rights, the department may, on its own motion or on the application of an interested person, and after notice and opportunity for hearing, issue an order establishing drilling units on a statewide basis, or for defined areas within the state, or for oil and gas wells drilled to varying depths.

(2) An order establishing drilling units shall comply with [section 47-318\(2\), Idaho Code](#).

(3) In the absence of an order by the department establishing drilling or spacing units, or authorizing different well density patterns for particular pools or parts thereof, the following requirements shall apply:

(a) Oil wells. Every well drilled for oil shall be located in the center of a drilling unit consisting of a forty (40) acre governmental quarter-quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, with a tolerance of two hundred (200) feet in any direction from the center location.

(i) No oil well shall be drilled less than nine hundred ninety (990) feet from any other well drilling to and capable of producing oil from the same pool; and

(ii) No oil well shall be completed in a known pool unless it is located more than nine hundred ninety (990) feet from any other well completed in and capable of producing oil from the same pool.

(b) Vertical gas wells. Every vertical well drilled for gas shall be located in a drilling unit consisting of either a one hundred sixty (160) acre governmental quarter section or lot or tract, or combination of lots and tracts substantially equivalent thereto, or a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto. A vertical gas well located on a one hundred sixty (160) acre drilling unit shall have a minimum setback of three hundred thirty (330) feet to the exterior boundaries of the quarter section. A vertical gas well located on a six hundred forty (640) acre

drilling unit shall have a minimum setback of six hundred sixty (660) feet to the exterior boundaries of the governmental section.

(i) No gas well shall be drilled less than nine hundred ninety (990) feet from any other well drilling to and capable of producing gas from the same pool; and

(ii) No gas well shall be completed in a known pool unless it is located more than nine hundred ninety (990) feet from any other well completed in and capable of producing gas from the same pool.

(c) Horizontal wells. Every horizontal well drilled shall be located in a drilling unit consisting of a six hundred forty (640) acre governmental section or lot or tract, or combination of lots or tracts substantially equivalent thereto. No portion of the completed interval of a horizontal lateral shall be closer than six hundred sixty (660) feet to a section boundary or uncommitted tract within a unit. Except for wells in federal exploratory units or in secondary units, the completed interval shall be no closer than one thousand three hundred twenty (1,320) feet to any horizontal well or vertical well completed in the same formation.

(d) Notice. After drilling, testing and completing a well that meets the location requirements in paragraphs (a), (b) or (c) of this subsection, but prior to producing that well, an operator shall provide notice and opportunity for hearing for the proposed drilling unit. In addition to any other notice required by statute or rule, the operator shall provide notice of the proposed drilling unit by certified mail to all uncommitted owners within the proposed drilling unit. The department may authorize drilling units upon application, notice and an opportunity for hearing as provided in [section 47-328, Idaho Code](#). However, prior to establishing a drilling unit for a well that meets the location requirements in paragraph (a), (b) or (c) of this subsection, the department may grant a permit to drill that provides only the notice required in [section 47-316, Idaho Code](#).

(4) An operator may request a change in the size, shape or location of a drilling unit under this section, as provided in [section 47-318\(6\), Idaho Code](#). Request may be made for drilling units that are:

(a) Larger or smaller than forty (40) acres for oil;

(b) Larger or smaller than one hundred sixty (160) acres for gas; or

(c) Not located within the boundaries of a governmental section, quarter section or quarter-quarter section.

(5) Changes to drilling units may be authorized upon application, notice and an opportunity for hearing as provided in [section 47-328, Idaho Code](#). To authorize a change, the department shall find that such change would assist in preventing the waste of oil and gas, avoid drilling of unnecessary wells, or protect correlative rights. In addition to any other notice required by statute or rule, an operator shall provide proper notice and a copy of the application to all uncommitted owners within the proposed unit and to all other parties an operator reasonably believes may be affected. In establishing drilling units under this section, the department shall review the drilling unit's size, shape and location based on the application, any supporting exhibits, and evidence introduced at a hearing.

#### **History.**

[I.C., § 47-317](#), as added 2017, ch. 271, § 10.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 47-317 was amended and redesignated as § 47-314, pursuant to S.L. 2017, ch. 271, § 6, effective July 1, 2017.

#### **Compiler's Notes.**

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

#### **Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.



**§ 47-318. Well spacing.** — (1) The department shall promptly establish spacing units for each pool except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) An order establishing spacing units shall specify the size, shape and location of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole. Any unit established by the department shall be geographic. The geographic boundaries of the unit shall be described in accordance with the public land survey system. Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, or as provided in paragraph (b) of this subsection, the size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained by one (1) well; provided:

(a) If, at the time of a hearing to establish spacing units, there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one (1) well, the department shall make an order establishing temporary spacing units for the orderly development of the pool, pending the obtaining of the information required to determine what the permanent spacing should be.

(b) Where the federal agency administering federal minerals that would otherwise be included in a spacing unit has not leased or has failed to offer such federal minerals for lease auction for at least six (6) months, such federal minerals may be excluded from the unit upon application or upon the department's own determination.

(3) Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool. The department may establish spacing units of different sizes or shapes for different parts of a pool or may grant exceptions to the size, shape or location of any spacing unit or units or may change the sizes or shape of one (1) or more existing spacing units.

(4) An order establishing spacing units shall direct that no more than one (1) well shall be drilled to and produced from the common source of supply on any unit, and shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the filing of the application. If the department finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, or for other good cause shown, the department is authorized to make an order permitting the well to be drilled at a location other than that prescribed by such spacing order. Application for an exception shall be filed with the department and may be granted where it is shown that good cause for such exception exists and that consent to such exception has been given by the operators of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and, as to the lands upon which drilling units have not been established, by the majority of mineral interest owners of those lands which would be included in directly or diagonally offsetting drilling units under said order, if said order were extended to include such additional lands.

(5) An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. A pool may be divided into zones and a spacing unit for each zone may be established if necessary to prevent or assist in preventing waste of oil and gas, to avoid drilling unnecessary wells, to protect correlative rights or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one (1) well.

(6) An order establishing spacing units may be modified by the department to change the size, shape or location of one (1) or more spacing units, or to permit the drilling of additional wells on a reasonably uniform pattern. An operator may apply for changes to the size, shape or location of

spacing units. The department will review applications to change the size, shape or location of spacing units.

(7) Upon the filing of an application to establish spacing units, no additional well shall be commenced for production from the pool until the order establishing spacing units has been made, unless the commencement of the well is authorized by order of the department.

### **History.**

1963, ch. 148, § 7, p. 433; am. 1974, ch. 17, § 32, p. 308; am. 2013, ch. 189, § 3, p. 467; am. 2015, ch. 94, § 1, p. 229; am. 2016, ch. 48, § 4, p. 129; am. and redesisg. 2017, ch. 271, § 11, p. 677.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 189, in subsection (d), substituted “with the commission and may be granted” for “with the director of the Idaho department of lands and may be granted by him” in the third sentence and deleted the former last sentence, which read: “Where an exception is not granted by the director or where an objection to the action of said director is filed with the commission within ten (10) days after he has granted or denied the application no well shall be drilled on said drilling unit except in accordance with the order establishing drilling units, unless and until the commission shall, after notice and hearing upon the application, grant such exception.”

The 2015 amendment, by ch. 94, rewrote subsection (b) [now the introductory paragraph and paragraph (a) in subsection (2)], which formerly read: “An order establishing spacing units shall specify the size and shape of the units, which shall be such as will, in the opinion of the commission, result in the efficient and economical development of the pool as a whole. The size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained by one (1) well; provided, that if, at the time of a hearing to establish spacing units there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one (1) well, the commission may make an order establishing temporary spacing units for the orderly development of

the pool pending the obtaining of the information required to determine what the ultimate spacing should be”; added paragraph (2)(b); inserted “geologic or otherwise, affecting the orderly development of a pool” in the first sentence in subsection (3); and, in subsection (4), substituted “operators” for “owners” and inserted “majority of mineral interest” in the last sentence.

The 2016 amendment, by ch. 48, substituted “department” for “commission” throughout the section and substituted “determination” for “motion” at the end of paragraph (2)(b).

The 2017 amendment, by ch. 271, redesignated the section from § 47-321; rewrote the section heading, which formerly read: “Spacing units”; in subsection (2), substituted “size, shape and location” for “size and shape” near the beginning of the first sentence in the introductory paragraph, in paragraph (a), substituted “shall make an order” for “may make an order” near the middle and substituted “permanent spacing” for “ultimate spacing” near the end, and substituted “auction for at least six (6) months” for “in accordance with [30 U.S.C. section 226](#) and [43 CFR 3120.1-2\(a\)](#)” near the end of paragraph (b); substituted “size, shape or location” for “size or shape” near the end of subsection (3); added the last two sentences in subsection (5); and in subsection (6), substituted “size, shape or location” for “size or shape” near the middle of the first sentence and added the last sentence.

### **Compiler’s Notes.**

Former § 47-318 was amended and redesignated as § 47-310 by S.L. 2017, ch. 271, § 2, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 2 of S.L. 2015, ch. 94 declared emergency. Approved March 24, 2015.

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-319. Setbacks.** — (1) Except as provided in this section, oil and gas wells, tank batteries and gas processing facilities shall not be constructed within three hundred (300) feet of an existing occupied structure, domestic water well, canal, ditch or the natural or ordinary high-water mark of surface waters or within fifty (50) feet of a highway.

(2) Oil and gas wells, tank batteries and gas processing facilities may be constructed less than three hundred (300) feet but more than one hundred (100) feet from an existing occupied structure, domestic water well, canal or ditch if the operator has obtained the express written permission from the owner of the occupied structure, domestic water well, canal or ditch.

**History.**

I.C., § 47-319, as added 2017, ch. 271, § 12, p. 677.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-319 was amended and redesignated as § 47-315 by S.L. 2017, ch. 271, § 7, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-320. Integration of tracts — Orders of department.** — (1) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the department, upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells, development and operation thereof and for the sharing of production therefrom. The department, as a part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.

(2) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon.

(3) Each such integration order shall authorize the drilling, equipping and operation, or operation, of a well on the spacing unit; shall designate an operator for the integrated unit; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. Each such integration order shall provide for the four (4) following options:

(a) Working interest owner. An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual

costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into a joint operating agreement approved by the department in the integration order.

(b) Nonconsenting working interest owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner, is a nonconsenting working interest owner. The operator of the integrated spacing unit shall be entitled to recover a risk penalty of up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well, and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved by the department in the integration order.

(c) Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive no less than one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.

(d) Deemed leased. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the highest bonus payment per acre that the operator paid to another owner in the spacing unit prior to the filing of the integration application.



(4) An application for an order integrating the tracts or interests in a spacing unit shall substantially contain and be limited to only the following:

- (a) The applicant's name and address;
- (b) A description of the spacing unit to be integrated;
- (c) A geologic statement concerning the likely presence of hydrocarbons;
- (d) A statement that the proposed drill site is leased;
- (e) A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator;
- (f) A proposed joint operating agreement and a proposed lease form;
- (g) A list of all uncommitted owners in the spacing unit to be integrated under the application, including names and addresses;
- (h) An affidavit indicating that at least sixty-seven percent (67%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner;
- (i) An affidavit stating the highest bonus payment paid to a leased owner in the spacing unit being integrated prior to filing the integration application; and
- (j) A resume of efforts documenting the applicant's good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit. Provided however, if any owner requests no further contact from the applicant, the applicant will be relieved of further obligation to attempt contact to reach agreement with that owner. At least one (1) contact must be by certified U.S. mail sent to an owner's last known address. If an owner is unknown or cannot be found, the applicant must publish a legal notice of its intention to develop and request that the owner contact the applicant in a newspaper of general circulation in the county where the proposed spacing unit is located. The resume of efforts should indicate the applicant has made reasonable efforts to reach an agreement with all uncommitted owners in the

proposed spacing unit. Reasonable efforts are met by complying with this subsection.

(5) At the time the integration application is filed with the department, the applicant shall certify that, for uncommitted owners who are unknown or cannot be found, a notice of the application was published in a newspaper in the county where the proposed spacing unit is located. Each published notice shall include notice to the affected uncommitted owner of the opportunity to respond to the application, and the deadline by which a response must be filed with the department.

(6) An operator who has not been able to obtain consent from sixty-seven percent (67%) of the mineral interest acres in the spacing unit may nevertheless apply for an integration order under this section if all of the conditions set forth in this subsection have been met. The department shall issue an integration order, which shall affect only the unit area described in the application, if it finds that the operator has met all of the following conditions:

(a) The operator has obtained consent from at least fifty-five percent (55%) of mineral interest acres;

(b) The operator has negotiated diligently and in good faith for a period of at least one hundred twenty (120) days prior to his application for an integration order; and

(c) The uncommitted owners in the affected unit shall receive from the operator mineral lease terms and conditions that are no less favorable to the lessee than those set forth in [section 47-331\(2\), Idaho Code](#).

(7) An application for integration shall be subject to the procedures set forth in [section 47-328, Idaho Code](#).

### **History.**

1963, ch. 148, § 8, p. 433; am. 2016, ch. 48, § 5, p. 129; am. 2017, ch. 121, § 2, p. 280; am. and redesisg. 2017, ch. 271, § 13, p. 677.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 48, substituted “department” for “commission” in the section heading and throughout the section; substituted “upon the application of any owner in that proposed spacing unit, shall order integration of all tracts or interests in the spacing unit for drilling of a well or wells” for “upon the application of any interested person, shall make an order integrating all tracts or interests in the spacing unit for the” in subsection (a); in subsection (c), substituted “designate an operator for the integrated unit” for “provide who may drill and operate the well” in the first sentence, rewrote the former second sentence, which read: “If requested, each such integration order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation, or operation, of a well may elect to surrender his leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration which, if not agreed upon, shall be determined by the commission, or may elect to participate in the drilling and operation, or operation, of the well, on a limited or carried basis upon terms and conditions determined by the commission to be just and reasonable”; added paragraphs (c)(i) through (c)(v); and added subsections (d) through (g).

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 121, in subsection (c), substituted “four (4)” for “five” in the last sentence of the introductory language, in paragraph (c)(iii), inserted “no less than” in the next-to-last sentence, and rewrote the last sentence, which formerly read: “The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved by the department in the integration order,” deleted former paragraph (c)(iv), which read: “Objector. If an owner objects to any participation or involvement of any kind in the unit, such owner may elect to be an objector. An objecting owner’s interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. Provided however, an objecting owner may elect to have any funds to which he would otherwise be entitled transferred to the STEM action center,” redesignated former paragraph (c)(v) as present paragraph (c)(iv), rewrote the last sentence in present paragraph (c)(iv), which formerly read: “The operator of

an integrated spacing unit shall pay a leasing owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order,” and deleted the last paragraph in subsection (c), which concerned entitlement to share of production for owner paying for drilling, equipping or operating a well; in subsection (d), inserted “of general circulation” in the second-from-last sentence in paragraph (d)(x), and deleted the former last paragraph, which read: “An application shall not be required to be in any particular format. An application shall not be denied or refused for incompleteness if it complies substantially with the foregoing informational requirements”.

The 2017 amendment, by ch. 271, redesignated the section from § 47-322 and rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler’s Notes.**

Former § 47-320 was amended and redesignated as § 47-316 by S.L. 2017, ch. 271, § 9, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-321. Unit operations.** — (1) An agreement for the unit or cooperative development or operation of a field, pool, or part thereof, may be submitted to the department for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. Such approval shall constitute a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. The failure to submit such an agreement to the department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.

(2) The department, upon its own determination or upon application of an owner, shall conduct a hearing to consider the need for unit operation of an entire pool or portion thereof, to increase ultimate recovery of oil and gas from that pool or portion thereof. The department shall issue an order requiring unit operation if it finds that:

(a) Unit operation of the pool or portion thereof is reasonably necessary to prevent waste or to protect correlative rights;

(b) Unit operation of the pool or portion thereof is reasonably necessary for maintaining or restoring reservoir pressure, or to implement cycling, water flooding, enhanced recovery, horizontal drilling, de-watering or a combination of these operations or other operations or objectives to be cooperatively pursued with the goal of increasing the ultimate recovery of oil and gas; and

(c) The estimated cost to conduct the unit operation will not exceed the value of the estimated recovery of additional oil and gas resulting from unit operation.

(3) An application for requesting an order providing for the operation as a unit of one (1) or more pools or parts thereof in a field shall contain:

(a) A plat map showing the proposed unit, the existing spacing units, and well(s) within the units;

(b) The names and addresses of all persons owning mineral interests and working interests in the proposed unit;

(c) An affidavit that the applicant, by certified mail, notified all persons owning unleased mineral interests and working interests in the proposed unit at least sixty (60) days prior to filing the application with the department of the applicant's intention to make the application;

(d) A proposed plan of unit operations for the proposed unit that contains the information in subsection (5) of this section; and

(e) A proposed operating agreement that is consistent with the proposed plan of unit operations.

(4) An application for unit operations shall be subject to the procedures set forth in [section 47-328, Idaho Code](#).

(5) An order for a unit operation must be upon just and reasonable terms and conditions and shall prescribe a plan for unit operations that include [includes] all of the following:

(a) A description of the vertical and horizontal limits of the unit area;

(b) A statement of the nature of the operation contemplated;

(c) A provision for the supervision and conduct of the unit operation that designates an operator of the unit and provides a means to remove the operator and designate a successor operator;

(d) A provision to protect correlative rights, allocating to each separately owned tract in the unit area a just and equitable share of the production that is produced and saved from the unit area, other than production used or unavoidably lost in the conduct of the unit operation;

(e) A provision for credits and charges to adjust among working interest owners in the unit area for their interest in wells, tanks, pumps, machinery, materials and equipment that contribute to the unit operation;

(f) A provision establishing how the costs of unit operation, including capital investments and costs of terminating the unit operation, shall be determined and charged to each working interest owner or the interest of each owner, including a provision establishing how, when and by whom the share of unit production allocated to an owner who does not pay the

share of those costs charged to that owner or to the interest of that owner may be sold and the proceeds applied to the payment of that owner's share of those costs, and how accounts will be settled upon termination of the unit;

(g) A provision, if necessary, for carrying or otherwise financing an owner who elects to be carried or otherwise financed, which allows owners who carry or otherwise finance to recover up to three hundred percent (300%) of the unit costs attributed to an owner who elects to be carried or otherwise financed payable out of that owner's share of the production;

(h) A time when the unit operation is to commence and the manner in which, and the circumstances under which, the unit operation is to terminate and the unit is to be dissolved; and

(i) Additional provisions found to be appropriate to carry on the unit operation, to prevent waste and to protect correlative rights.

(6) An order for a unit operation may provide for a unit operation of less than the whole of a pool as long as the unit area is of size and shape reasonably required for that purpose and the conduct thereof will have no significant adverse effect upon other portions of the pool.

(7) The department, upon its own determination or upon the application of an owner, may for good cause terminate a unit operation and dissolve the unit on just and equitable terms. If not terminated earlier, the unit operation shall terminate upon final cessation of production from the pool or unitized portion thereof, the plugging and abandonment of unit wells and facilities, and reclamation of the surface.

(8) An order requiring a unit operation shall not become effective until the plan for unit operations approved by the department has been signed and approved in writing by the owners who, under the department's order, will be required to pay at least sixty-seven percent (67%) of the costs of the unit operation, and also signed and approved in writing by the working interest owners of at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.

(9) An order providing for unit operation may be amended by an order of the department in the same manner and subject to the same conditions as an original order providing for the unit operation.

(10) The department may issue an order for the unit operation of a pool or pools or parts thereof that includes a unit created by a prior order of the department or by voluntary agreement. This subsequent order, in providing for the allocation of the unit's production, must treat first the unit area previously created as a single tract and then allocate, in the same proportions as those specified in the prior order, the portion of the new unit's production allocated to the previous unit among the separately owned tracts included in the previously created unit area.

(11) The department may approve additions to the unit of portions of a pool not previously included within the unit and may extend the unit area as reasonably necessary to prevent waste or to protect correlative rights. The department may approve exclusions from the unit area as reasonably necessary to prevent waste or to protect correlative rights. An order adding to or excluding from a unit area must be upon just and reasonable terms.

(a) An order that amends a plan of unit operations and adds an area to a previously established unit shall not become effective until the amended plan of unit operations has been signed and approved in writing by the owners who will be required to pay at least sixty-seven percent (67%) of the costs of the unit operation in the area to be added, and also signed and approved in writing by the working interest owners of at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.

(b) An order providing for an exclusion from a unit area may not become effective until an amended plan of unit operations excluding an area from the unit has been approved in writing by the owners in the original unit area that are required to pay at least sixty-seven percent (67%) of the costs of unit operations, and also approved in writing by the working interest owners in the original unit area required to pay at least sixty-seven percent (67%) of the production of the unit operations, and the department has made a finding in the order that the plan for unit operations has been so approved.



(12) Operations, including the commencement, drilling or operation of a well upon a portion of a unit area, are deemed conducted on each separately owned tract in the unit area by the owner or owners thereof. That portion of a unit's production allocated to a separately owned tract in a unit area, when produced, is deemed produced from a well drilled on that tract. Operations conducted under an order of the department providing for a unit operation shall constitute fulfillment of expressed or implied obligations of a lease or contract covering lands within the unit area to the extent that compliance with those obligations is not possible without a further order of the department.

(13) That portion of unit production allocated to a tract and the proceeds of sale for that portion are deemed the property and income of the several persons to whom or to whose credit that portion is allocated or payable under the order providing for unit operation.

(14) A division order or other contract relating to a sale or purchase of production from a separately owned tract or combination of tracts remains in force and applies to oil and gas allocated to the tract until terminated in accordance with provisions of the order providing for unit operation, or in accordance with the terms of such division order or other contract.

(15) Except to the extent that all affected parties agree, an order providing for unit operation does not result in a transfer of all or part of a person's title to the oil and gas rights in a tract in the unit area.

(16) Except to the extent that all affected parties agree, all property, whether real or personal, that may be acquired in the conduct of a unit operation hereunder is deemed acquired for the account of the owners within the unit area and is deemed the property of the owners in the proportion that the expenses of the unit operation are charged.

(17) The formation of a unit and the operation of the unit under an order of the department shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in the restraint of trade.

### **History.**

1963, ch. 148, § 9, p. 433; am. 2015, ch. 66, § 1, p. 176; am. 2016, ch. 48, § 6, p. 129; am. and redesign. 2017, ch. 271, § 14, p. 677.

## STATUTORY NOTES

### **Amendments.**

The 2015 amendment, by ch. 66, rewrote the section heading which formerly read: “Approval of agreements by commission — Defense to litigation”; designated the existing provisions of the section as subsection (1); and added subsections (2) through (17).

The 2016 amendment, by ch. 48, substituted “department” for “commission” throughout the section; substituted “own determination” for “own motion” in the first sentence of the introductory paragraph of subsection (2) and in the first sentence of subsection (7); and rewrote subsection (4), which formerly read: “At the time the application for unit operations is filed with the commission, the applicant shall certify that a copy of the application was served on all unleased mineral interest and working interest owners in the proposed unit. The application may be served by personal delivery or certified U.S. mail, return receipt requested; provided however, if an owner cannot be located, the application may be served by publishing a notice in a newspaper of general circulation reasonably likely to give notice to the owner once a week for two (2) consecutive weeks and mailing the application to the last known address of the owner. The unleased mineral interest and working interest owners shall have twenty-one (21) days from the date of service of the application to file a response to the application with the commission. The commission will schedule a hearing on the application for unit operations and will give notice of the hearing to the applicant and all owners who file a response to the application with the commission”.

The 2017 amendment, by ch. 271, redesignated the section from § 47-323; substituted “[section 47-328, Idaho Code](#)” for “[section 47-324, Idaho Code](#)” at the end of subsection (4); and substituted “sixty-seven percent (67%)” for “fifty-five percent (55%)” twice in subsection (8) and twice in paragraphs (11)(a) and (11)(b).

### **Compiler’s Notes.**

Former § 47-321 was amended and redesignated as § 47-318 by S.L. 2017, ch. 271, § 11, effective April 6, 2017.

The bracketed insertion in the introductory paragraph in subsection (5) was added by the compiler to supply the grammatically correct term.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-322. Oil and gas metering systems.** — (1) Each meter shall be properly constructed, maintained, repaired and operated to continually and accurately register the quantity of oil and gas produced from the well.

(2) The meter shall be installed, used and operated according to industry standards and guidelines promulgated by the American petroleum institute, American gas association, and the gas processors association that are in effect at the time of installation of the meter. If standards conflict, the most current American petroleum institute standard shall apply.

(3) All custody transfer meters and all allocation meters used in the allocation of custody transfer volumes shall be calibrated by a third party at least quarterly in each calendar year. The records of calibrations shall be maintained by the operator of the meter for at least five (5) years and copies shall be submitted to the department.

#### **History.**

I.C., § 47-322, as added by 2017, ch. 271, § 15, p. 677.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Former § 47-322 was amended and redesignated as § 47-320 by S.L. 2017, ch. 271, § 13, effective April 6, 2017.

For additional information on the American petroleum institute, referred to in subsection (2), see <https://www.api.org>.

For additional information on the American gas association, referred to in subsection (2), see <https://www.aga.org>.

In 2016, the gas processors association, referred to in subsection (2), changed its name to GPA Midstream Association, see <https://gpamidstream.org>.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-323. Commingling of production.** — A producer shall not, prior to metering, commingle production from two (2) or more oil and gas wells without prior approval from the department after notice and opportunity for hearing.

**History.**

I.C., § 47-323, as added by 2017, ch. 271, § 16, p. 677.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 47-323 was amended and redesignated as § 47-321 by S.L. 2017, ch. 271, § 14, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-324. Reporting requirements.** — (1) All reporting parties shall file the applicable reports described in this section to the department within the time frames provided. Each report shall be completed on forms prescribed by the department.

(a) Monthly production report. Operators shall file monthly production reports to properly account for all oil, gas and water production and disposition from each well, including the amounts of oil and gas sold from each well. Production reports shall be filed on the required form before the fifteenth day of the second calendar month following the month of production.

(b) Gathering facility report. Operators of a gathering facility shall file monthly reports concerning the operation of the plant on the required form before the fifteenth day of the second calendar month following the month of operation.

(c) Gas processing plant report. The operator of each plant manufacturing or extracting liquid hydrocarbons, including gasoline, butane, propane, condensate, kerosene or other derivatives from natural gas, or refinery or storage vapors, shall file a report concerning the operation of the plant on the required form before the fifteenth day of the second calendar month following the month of operation.

(d) Monthly transportation and storage report. Each gatherer, transporter, storer or handler of crude oil or hydrocarbon products, or both, shall file monthly reports showing the required information concerning the transportation operations of the gatherer, transporter, storer or handler before the fifteenth day of the second calendar month following the month of operation. The provisions of this subsection shall not apply to the operator of any refinery, processing plant, blending plant or treating plant if the operator of the well has filed the required form.

(e) Monthly purchaser report. Any person who purchases or is entitled to purchase any product that is subject to the state of Idaho severance tax from the producer or operator of a lease located in this state shall file monthly reports to account for the purchase of all hydrocarbons,

including volume and price paid. Purchaser reports shall be filed on the required form before the fifteenth day of the second calendar month following the month in which the hydrocarbons were purchased.

(2) All well test reports. An operator shall file all well test reports within thirty (30) days of completing or recompleting the well. The reports shall include all oil, gas and water produced during all tests.

(3) Well production potential test reports. Unless otherwise provided for in this section, each operator of producing gas or oil wells shall test each producing well for a twenty-four (24) hour period every six (6) months and shall record all oil, gas and water volumes, including choke size, pressures and any interim bottom hole pressure surveys every six (6) months, resulting from the test on the form.

(4) Logs. An operator shall file all logs, including but not limited to those listed in this subsection, not later than thirty (30) days after the date the log was run, if run:

(a) An open hole electrical, radioactivity or other similar log, or combination of open hole logs of the operator's choice;

(b) A gamma ray log from total depth to ground level elevations. The operator may require a shorter-logged interval if it determines that the log is unnecessary or impractical or if hole conditions risk jeopardizing the open hole; and

(c) A cement bond log across the casing, verifying the formation seal integrity and isolation.

(5) Additional reports. An operator shall file a drilling, completion, workover or plugging report within thirty (30) days of completing or plugging the well.

(6) The department shall report quarterly to the commission on the produced volumes of oil and gas, sales volumes of oil and gas, and the meeting of industry standards.

(7) Should an operator fail to comply with this section, the commission may assess a penalty in accordance with [section 47-329\(3\), Idaho Code](#), or may order the well or oil and gas facilities to be shut-in, after notice, opportunity to cure, and opportunity for a hearing.



**History.**

I.C., § 47-324, as added by 2017, ch. 271, § 17, p. 677.

**STATUTORY NOTES****Compiler's Notes.**

Former § 47-324 was amended and redesignated as § 47-328 by S.L. 2017, ch. 271, § 21, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-325. Falsification of records — Limitation of actions.** — (1) Any person who, for the purpose of evading this act or any rule, regulation or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum required by this act, or by any such rule, regulation or order, or shall omit, or cause to be omitted, from any such report, record, account, or memorandum, full, true and correct entries as required by this act, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding twelve (12) months, or to both such fine and imprisonment.

(2) No suit, action or other proceeding based upon a violation of this act or any rule, regulation or order of the commission hereunder shall be commenced or maintained unless same shall have been commenced within one (1) year from date of the alleged violation. Provided however, the provisions of this subsection shall not apply to actions governed by the provisions of chapter 52, title 67, Idaho Code.

**History.**

1963, ch. 148, § 12, p. 433; am. 2012, ch. 73, § 4, p. 209; am. and redesisg. 2017, ch. 271, § 18, p. 677.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 73, deleted “Actions against the commission — Appeals” from the section heading and deleted former subsections (a) and (b) pertaining to such actions; redesignated former subsections (c) and (d) as present subsections (a) and (b); substituted “twelve (12) months” for “six (6) months” near the end of subsection (a); and added the last sentence in subsection (b).

The 2017 amendment, by ch. 271, redesignated the section from § 47-326.

### **Compiler's Notes.**

Former § 47-325 was amended and redesignated as § 47-329 by S.L. 2017, ch. 271, § 22, effective April 6, 2017.

The term “this act” throughout this section refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

The words enclosed in parentheses in subsection (a) so appeared in the law as enacted.

### **Effective Dates.**

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho's Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-326. Public data.** — (1) Subject only to any applicable provisions of [section 47-327, Idaho Code](#), the following data is public information that shall not be considered trade secret information under chapter 8, title 48, Idaho Code, nor be exempt from public records disclosure under chapter 1, title 74, Idaho Code. Except as provided in [section 47-327, Idaho Code](#), the department shall, upon receipt of the information, make publicly available all data under this section on its website without requiring any person to submit a public records request:

- (a) All reports required under [section 47-324\(1\) through \(5\), Idaho Code](#);
- (b) All well plats; and (c) All state-required permits, except seismic data.

(2) The department shall provide complete internet access to all documents in subsection (1) of this section, not granted confidential status, on its website by no later than December 31, 2017.

(3) A claim to exempt data from disclosure shall be supported and accompanied by a specific citation to the law authorizing an exemption from disclosure and an explanation of how the data meets the standards for being withheld from disclosure. When a portion of a record or a portion of a page in that record is subject to disclosure and the other portion is subject to a claim that it is exempt from disclosure under this chapter or chapter 1, title 74, Idaho Code, the person making the claim must clearly identify the portion claimed as exempt and the portion not claimed as exempt from disclosure at the time of submittal.

### **History.**

[I.C., § 47-325](#), as added by 2017, ch. 271, § 19, p. 677.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Former § 47-326 was amended and redesignated as § 47-325 by S.L. 2017, ch. 271, § 18, effective April 6, 2017.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this

act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-327. Confidentiality of well and trade information.** — (1) Information that shall be held confidential from the public includes logs of a well granted confidential well status pursuant to subsection (2) of this section, electrical or radioactivity logs, electromagnetic or magnetic surveys, core descriptions and analyses, maps, and other geological, geophysical and engineering information. Seismic data shall remain confidential from all parties at the discretion of the operator due to the nature of purchasing and licensing such data.

(2) An operator may request confidential well status at the time of filing an application for a permit to drill. The information in the application form itself will not be confidential.

(a) Confidential status shall be granted and shall include all pertinent data and information relating to drilling completion and testing the well. Such information shall be kept confidential from the public for a period of one hundred eighty (180) days after completion of the well.

(b) Well test results shall be kept confidential from the public for a period of one hundred eighty (180) days after completion of the test.

(c) No extensions shall be allowed beyond the one hundred eighty (180) day confidentiality period.

(3) An operator may request that well logs for a well with confidential well status be held confidential.

(a) To obtain confidential treatment of a well log, the operator of the well shall place the log in an envelope, noting log readings and marked “confidential.”

(b) An operator may request, and the department may grant, an additional six (6) months of confidentiality for well logs.

(c) Confidential status for a well log shall terminate six (6) months after the run date on the log or, in the case of an extension, twelve (12) months after the run date on the log. Confidential status for a well log shall not continue for a period in excess of twelve (12) months from the date the log was run on the well.

(4) The state tax commission, the oil and gas conservation commission, the Idaho geologic [geological] survey and other state agencies shall share oil and gas records when necessary for those agencies to carry out their duties assigned by law, regardless of whether the records are held confidential from the public under this section. This sharing of records shall not render the shared records subject to disclosure to the public under the public records act.

(5) All state agencies, state employees, contract personnel, temporary personnel and their agents or affiliates shall be governed by the confidentiality provisions of this section and shall be subject to sections 74-117 and 74-118, Idaho Code, should any information or records protected under statute be disclosed.

### **History.**

I.C., § 47-327, as added by 2017, ch. 271, § 20, p. 677.

## **STATUTORY NOTES**

### **Cross References.**

Idaho geological survey, § 47-201 et seq.

Oil and gas conservation commission, § 47-314.

Public records act, § 74-101 et seq.

State tax commission, § 63-101.

### **Compiler's Notes.**

Former § 47-327 was amended and redesignated as § 47-313 by S.L. 2017, ch. 271, § 5, effective April 6, 2017.

The bracketed insertion in the first sentence in subsection (4) was added by the compiler to correct the name of the referenced agency. See § 47-201 et seq.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.



**§ 47-328. Rules for commission — Administrative procedures. — (1)**

The commission shall have authority to hear rulemaking proceedings, complaints filed with it pursuant to this chapter and appeals from the oil and gas administrator's decision on an application filed pursuant to this chapter, and any other matter the commission decides should be heard by the commission. The commission may act on its own motion. The commission may prescribe rules governing the procedure before it, subject to the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code. Provided however, that no rulemaking except for that done under [section 67-5226, Idaho Code](#), may be conducted for twelve (12) months beginning on July 1, 2017.

(2) In all cases where a complaint is made by the commission or any person that any provision of this act or any rule or order of the commission is being violated, the commission shall serve notice of any hearing to be held on such application or complaint to the interested persons by certified mail, return receipt requested, or in the same manner as is provided in the rules of civil procedure for the service of summons in civil actions. Where the interested person is unknown or cannot be located, the commission shall serve notice by publishing at least one (1) notice of the hearing to such person in a newspaper of general circulation in the county where the affected tract is located. Such notice must be sent, delivered or published, as appropriate, at least five (5) business days before the date of the hearing.

(3) Except as provided in [section 47-316\(1\)\(a\), Idaho Code](#), and subsection (2) of this section, any request for an order related to oil and gas activities within the commission's jurisdiction, other than a civil penalty proceeding pursuant to [section 47-329, Idaho Code](#), or other enforcement action by the department of lands or the commission, shall be made by application to the department of lands and processed as provided in this section.

(a) The department shall notify the applicant within five (5) business days of receipt of an application if additional information is required for the department to evaluate the application.

(b) For applications involving an order regarding unit operations or integration of a drilling unit, the applicant shall send a copy of the application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located. The mailing shall be sent by certified mail within seven (7) calendar days of filing the application and include notice of the hearing date on which the oil and gas administrator will consider the application. For any uncommitted owners and working interest owners who cannot be located, an applicant shall publish notice of any application for an order, notice of hearing and response deadline once in a newspaper of general circulation in the county in which the affected property is located and request the department publish notice on its website within seven (7) calendar days of filing of the application. Only an uncommitted owner in the affected unit may file an objection or other response to the application, and the uncommitted owner shall file at least fourteen (14) calendar days before the hearing date provided in the notice.

(c) For applications not involving paragraph (b) of this subsection, the department and any uncommitted owner within the area defined in the application may file objections or other responses to the application and shall file at least fourteen (14) calendar days before the hearing date provided in the notice.

(d) The oil and gas administrator shall hear the application and make a decision on the application's merits. The oil and gas administrator shall set regular hearing dates. Applications shall be filed at least forty-five (45) calendar days before a desired hearing date. Untimely applications shall be continued until the next hearing. The oil and gas administrator may for good cause continue any hearing. The oil and gas administrator may appoint a hearing officer, who shall have the power and authority to conduct hearings. Discovery is not permitted. The department may appear and testify at the hearing. When applications are uncontested, the applicant may request, and the oil and gas administrator may allow, approval without a hearing based on review of the merits of a verified application and the supporting exhibits.

(e) The oil and gas administrator shall issue a written decision on any such application within thirty (30) calendar days of the hearing. The oil

and gas administrator's decision shall not be subject to any motion for reconsideration or further review, except for appeal to the commission provided in subsection (4) of this section.

(4) The oil and gas administrator's decision on an application or a request for an order may be appealed to the commission by the applicant or any owner who filed an objection or other response to the application within the time required. An appeal must be filed with the oil and gas administrator within fourteen (14) calendar days of the date of issuance of the oil and gas administrator's written decision. The date of issuance shall be three (3) calendar days after the oil and gas administrator deposits the decision in the U.S. mail, or the date on which he remits a decision electronically. Such appeal shall include the reasons and authority for the appeal and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings, by certified mail, or by personal service. Any person who participated in the proceeding may file a response to the appeal within five (5) business days of service of a copy of the appeal materials. The appellant shall provide the oil and gas administrator with proof of service of the appeal materials on other persons as required in this section. The commission shall make a decision based on the record as set forth in the written submittals of only the appellant and any other participating qualified person, the oil and gas administrator's decision, and any oral argument taken by the commission at an appeal hearing.

(5) Appeals to the commission shall be heard at the next regularly scheduled commission hearing, or at a special meeting of the commission if determined by the commission. In no case will a hearing be later than thirty (30) calendar days after the filing of an appeal. The commission may take argument from, but not new testimony of, the appellant and other qualified participating persons at the hearing. The commission shall make a decision on the appeal at the hearing and issue a written order within five (5) business days of the hearing. The prevailing party shall draft a proposed written order and submit it within two (2) business days. The final order of the commission shall not be subject to any motion for reconsideration.

(6) If no appeal is filed with the commission within the required time, the decision of the oil and gas administrator shall become the final order.

(7) Judicial review of actions taken by the commission shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(8) For an application or request for an order submitted under subsection (3) of this section, only a person qualified under subsection (4) of this section who has completed the appeal procedures set forth in this section shall be considered to have exhausted administrative remedies as required in [section 67-5271, Idaho Code](#).

(9) Each order shall include a reasoned statement in support of the decision, including a concise statement of facts supporting any findings, a statement of available procedures and time limits for appeals. Findings must be based exclusively on materials in the record. The applicant and any participating qualified person shall be served with a copy of the order. The order shall include or be accompanied by a certificate of service.

(10) Every application shall be signed by the applicant or his representative, and his address shall be stated thereon. The signature of the applicant or his representative constitutes a certificate by him that he has read the application and that to the best of his knowledge, information and belief there is good ground to support the same. Each application shall be of such form and content and accompanied by the number of copies required by rule of the commission. Each application shall be accompanied by a fee as established in statute or rule.

### **History.**

1963, ch. 148, § 10, p. 433; am. 1974, ch. 17, § 33, p. 308; am. 1981, ch. 247, § 1, p. 494; am. 1993, ch. 216, § 42, p. 587; am. 2016, ch. 48, § 7, p. 129; am. 2017, ch. 121, § 3, p. 280; am. and redesign. 2017, ch. 271, § 21, p. 677; am. 2018, ch. 169, § 13, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

Service of summons, [Idaho R. Civ. P. 4](#).

Idaho department of lands, § 58-101 et seq.

Oil and gas administrator, § 58-104A.

## **Amendments.**

The 2016 amendment, by ch. 48, added “— Administrative procedures” at the end of the section heading and rewrote the section to the extent that a detailed comparison would be impracticable.

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 121, inserted “of general circulation” in the next-to-last sentence in subsection (b); added “and processed as provided in this section” in subsection (c) and rewrote paragraphs (c)(i) through (c)(v), concerning processing of applications; in subsection (d), inserted “or a request,” in the first sentence, deleted “below” following “proceedings” in the fifth sentence, in the sixth sentence, deleted “below” following “proceeding,” substituted “business days” for “calendar days,” and deleted “below” following “record” in the last sentence; in subsection (e), inserted “calendar” in the second sentence, deleted “direct the department to” following “hearing and” in the fourth sentence, deleted “to the department” following “submit to” in the fifth sentence; deleted the former second sentence in subsection (g), which read: “Only a person qualified under subsection (d) of this section who has completed the appeal procedures set forth in this section shall be considered to have exhausted administrative remedies as required in [section 67-5271, Idaho Code](#)”; inserted present subsection (h), and redesignated subsequent subsections accordingly.

The 2017 amendment, by ch. 271, redesignated the section from § 47-324 and rewrote the section to the extent that a detailed comparison is impracticable.

The 2018 amendment, by ch. 169, substituted “oil and gas administrator” for “director” throughout paragraph (3)(d), and in paragraph (3)(e), substituted “oil and gas administrator’s” for “director’s” and redesignated the last paragraph as subsection (10).

## **Compiler’s Notes.**

Former § 47-328 was amended and redesignated as § 47-312 by S.L. 2017, ch. 271, § 4, effective April 6, 2017.

The term “this act” near the beginning of subsection (2) refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-

320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 75 of S.L. 1974, ch. 17, provided that the act should take effect on and after July 1, 1974.

Section 8 of S.L. 2016, ch. 48 declared an emergency. Approved March 16, 2016.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-329. Powers of commission — Witnesses — Penalty.** — (1) The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by the commission.

(2) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

(3) Any person who violates or fails to comply with any of the provisions of this chapter or any rules or orders made or promulgated hereunder may be assessed a civil penalty by the commission or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each violation and shall be liable for reasonable attorney's fees. Each day the violation continues shall constitute a separate and additional violation, punishable by separate and additional civil penalties in like amount or other like civil penalties as determined by the commission; provided that the civil penalties do not begin to accrue until the date notice of violation and opportunity to be heard are given.

(a) Assessment of a civil penalty may be made in conjunction with any other commission administrative action.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code, which civil penalty begins to accrue no earlier than the date notice of violation and opportunity for a hearing are given.

(c) If the commission is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the

commission, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the commission has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the commission to have occurred pursuant to chapter 52, title 67, Idaho Code.

(e) All civil penalties collected pursuant to this section shall be remitted to the oil and gas conservation fund.

(4) Whenever it shall appear that any person is violating or threatening to violate any provision of this act or any rule, regulation, or order made hereunder, the commission may bring a civil action in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant, if there be more than one (1) defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. In such suit, the commission may seek damages to recover costs caused by such violation including, but not limited to, costs of well control, spill response and cleanup, restoration of fresh waters, well plugging and abandonment, and reclamation of surface disturbance.

(5) Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission shall fail to bring suit to enjoin any actual or threatened violation of this act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected and who has, ten (10) days or more prior thereto, notified



the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit.

(6) Any person who knowingly violates any provision of this chapter, or any of the rules promulgated hereunder for carrying out the provisions of this chapter, or who knowingly fails or refuses to comply with any requirements herein specified, or who knowingly interferes with the commission, its agents, designees or employees in the execution or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or be imprisoned in a county jail for not more than twelve (12) months, or be subject to both such fine and imprisonment.

(7) Nothing in this chapter shall be construed as requiring the commission to report minor violations for prosecution when it believes that the public interest will be best served by suitable warnings or other administrative action.

### **History.**

1963, ch. 148, § 11, p. 433; am. 2012, ch. 73, § 3, p. 209; am. 2012, ch. 80, § 1, p. 230; am. and redesign. 2017, ch. 271, § 22, p. 677.

## **STATUTORY NOTES**

### **Cross References.**

Contempt, § 7-601 et seq.

Oil and gas conservation fund, § 47-330.

### **Amendments.**

The 2012 amendment, by ch. 73, substituted “may issue” for “may in term time or vacation issue” in the first sentence in paragraph (b); added subsection (c) and redesignated the subsequent subsections accordingly; added the last sentence in present subsection (d); deleted the former last sentence in subsection (e), which read, “If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a

party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party”; and added subsections (f) and (g).

The 2012 amendment, by ch. 80, in subsection (c), added the proviso at the end of the introductory paragraph and inserted “which civil penalty begins to accrue no earlier than the date notice of violation and opportunity for a hearing are given” in paragraph (2); and, near the beginning of subsection (f), added “knowingly” preceding “fails” and preceding “interferes.”

The 2017 amendment, by ch. 271, redesignated the section from § 47-325; redesignated the paragraphs; and inserted “or orders made or” preceding “promulgated hereunder” near the beginning of the introductory paragraph in subsection (3).

### **Compiler’s Notes.**

Former § 47-329 was amended and redesignated as § 47-309 by S.L. 2017, ch. 271, § 1, effective April 6, 2017.

The term “this act” throughout subsections (4) and (5) refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

### **Effective Dates.**

Section 6 of S.L. 2012, ch. 73 declared an emergency. Approved March 20, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho's Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-330. Oil and gas conservation fund created — Tax.** — (1) For the purposes of paying the expenses of administration of this act and for the privilege of extracting oil and gas in this state, there is hereby levied and imposed on all oil and gas produced, saved and sold or transported from the premises in Idaho where produced a tax of two and one-half percent (2.5%) of the gross income received by the producer of the oil and gas produced. “Gross income” shall mean the amount realized by the producer for sale of the oil and gas, whether the sale occurs at the wellhead or after transportation of the product, without deduction for marketing, transportation, manufacturing, and processing costs borne by the producer. Where the parties to the sale are related parties and the sales price is lower than the price for which that oil and gas could otherwise have been sold to a ready, willing, and able buyer and where the taxpayer was legally able to sell the oil and gas to such a buyer, gross income shall be determined by reference to comparable arms-length sales of like kind, quality, and quantity in the same field or area. For purposes of this subsection, “related parties” shall be as defined in [section 267 of the Internal Revenue Code](#), as defined, in [section 63-3004, Idaho Code](#). This tax is in addition to all other taxes provided by law. It shall be the duty of the state tax commission to enforce collection of this tax and to make such rules as may be necessary, pursuant to the provisions of chapter 52, title 67, Idaho Code. All money so collected shall be remitted to the state treasurer for deposit in the oil and gas conservation fund, which fund is hereby created in the office of the state treasurer of the state of Idaho.

(2) The persons owning an interest, working interest, royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, shall be liable for such tax in proportion to their ownership at the time of production. The tax so assessed and fixed shall be payable monthly, and the sum so due shall be remitted to the state tax commission, on or before the twentieth of the month following the month in which the tax accrued, by the producer on behalf of himself and all other interested persons. The person remitting the tax, as herein provided, is hereby empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas, or in the proceeds thereof, at

the time of production a proportionate amount of such tax before making payment to such persons.

(3) The tax imposed by this section shall apply to all lands in the state of Idaho, anything in this act to the contrary notwithstanding; provided however, there shall be exempted from the tax hereinabove levied and assessed the following, to wit:

(a) The interest of the United States of America and the interest of the state of Idaho and the political subdivisions thereof in any oil and gas or in the proceeds thereof.

(b) The interest of any Indian or Indian tribe in any oil and gas or the proceeds thereof, produced from lands subject to the supervision of the United States.

(c) Oil and gas used in producing operations or for repressuring or recycling purposes.

(4) To the extent that such sections are not in conflict with the provisions of this act, the deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, 63-3040, 63-3042 through 63-3065A, 63-3068, 63-3071 and 63-3075 through 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due. Said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection pursuant to this act, be described as an oil and gas tax lien or proceeding.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment or any other amount erroneously or illegally collected shall be paid or satisfied out of the state refund account created by [section 63-3067, Idaho Code](#).

(5) All moneys collected under this chapter shall be distributed by the state tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) For the balance of the proceeds, forty percent (40%) shall be distributed by the end of the month following each monthly due date by the state tax commission into any oil and gas revenue share account as follows:

(i) Forty-four percent (44%) is hereby appropriated and shall be paid to the current expense fund of the county from which the oil and gas was produced, to be used to mitigate the impacts associated with oil and gas production, development and transportation in that county;

(ii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the cities within the county from which the oil and gas was produced. Such funds shall be distributed to each city based upon the proportion that the city's population bears to the total population of all of the cities within the county; and

(iii) Twenty-eight percent (28%) is hereby appropriated and shall be paid to the public school income fund.

(c) The remainder of the moneys deposited into the oil and gas conservation fund, sixty percent (60%) of the proceeds after refunds, may be expended pursuant to legislative appropriation and shall be used for defraying the expenses of the oil and gas conservation commission in carrying out the provisions of this act. At the beginning of each fiscal year, those moneys in the oil and gas conservation fund, after applicable refunds and distribution as noted in paragraphs (a) and (b) of this subsection, that exceed two hundred percent (200%) of the current year's appropriations for the oil and gas conservation commission shall be transferred to the general fund. The oil and gas conservation commission shall audit all bills for salaries and expenses incurred in the enforcement of this act that may be payable from the oil and gas conservation fund that shall be audited, allowed and paid as to the claims against the state.

### **History.**

1963, ch. 148, § 17, p. 433; am. 2012, ch. 79, § 1, p. 228; am. 2013, ch. 187, § 7, p. 447; am. 2015, ch. 274, § 1, p. 1129; am. 2017, ch. 271, § 23, p. 677; am. 2018, ch. 169, § 14, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

General fund, § 67-1205.

Oil and gas conservation commission, § 47-314.

Public school income fund, § 33-903.

State refund account, § 63-3067.

State tax commission, § 63-101.

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2012 amendment, by ch. 79, rewrote the section, adding subsections (4) and (5).

The 2013 amendment, by ch. 187, made several technical corrections in this section.

The 2015 amendment, by ch. 274, rewrote subsection (1), which formerly read: “For the purposes of paying the expenses of administration of this act and for the privilege of extracting oil and gas in this state, there is hereby levied and imposed on all oil and gas produced, saved and sold or transported from the premises in Idaho where produced a tax of two and one-half percent (2.5%) of the market value of the oil or gas produced at the site of production. If the oil and gas is transported from the premises prior to sale, then the tax will be determined based on the published henry hub spot price for gas or wti cushing spot price for crude oil at the close of business the day the oil or gas leaves the premises. Transportation from the premises prior to the sale does not include movement of oil or gas from the wellhead to another site in Idaho by the same person for dehydration or other processing required for sale. This tax is in addition to all other taxes provided by law. It shall be the duty of the state tax commission to enforce collection of this tax and to make such rules as may be necessary, pursuant

to the provisions of chapter 52, title 67, Idaho Code. All money so collected shall be remitted to the state treasurer for deposit in the oil and gas conservation fund, which fund is hereby created in the office of the state treasurer of the state of Idaho.”

The 2017 amendment, by ch. 271, in subsection (1), substituted “oil and gas” for “oil or gas” two times in the first and second sentences and inserted “marketing” preceding “transportation, manufacturing, and processing costs” near the end of the first sentence; in subsection (2), in the second sentence, substituted “payable monthly” for “payable quarterly” near the beginning and substituted “month following the month” for “next month following the preceding quarter” near the middle; in subsection (3), substituted “oil and gas” for “oil or gas” in paragraphs (a) and (b); in paragraph (5)(b), rewrote paragraph (i), which formerly read: “Twenty-eight percent (28%) is hereby appropriated and shall be paid to the current expense fund of the county from which the oil or gas was produced” and deleted former paragraph (iv), which read: “Sixteen percent (16%) shall be transferred to the local economic development account that is hereby created in the agency asset fund to provide assistance in those counties experiencing a severe economic hardship due to the cutback or closure of business and industry associated with oil or gas production”.

The 2018 amendment, by ch. 169, deleted an extraneous parenthesis at the end of paragraph (5)(b)(iii).

### **Federal References.**

Section 267 of the internal revenue code, referred to in the fourth sentence in subsection (1), is codified as [26 U.S.C.S. § 267](#).

### **Compiler’s Notes.**

The term “this act” in subsections (1) and (3) refers to S.L. 1963, Chapter 148, which is compiled as §§ 47-309 to 47-316, 47-318, 47-320, 47-321, 47-325, and 47-328 to 47-330. The reference probably should read “this chapter,” being chapter 3, title 47, Idaho Code.

The term “this act” in subsections (4) and (5)(c) refers to S.L. 2012, Chapter 79, which is codified as this section only. The reference probably should be to “this chapter,” being chapter 3, title 47, Idaho Code.



Section 31 of S.L. 2017, ch. 271 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 19 of S.L. 1963, ch. 148 declared an emergency. Approved March 19, 1963.

Section 4 of S.L. 2012, ch. 79 provided that the act should take effect on and after April 1, 2012.

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — A Summary of Revisions to Idaho’s Oil and Gas Conservation Act and Rules: Responding as Production in Idaho Nears Reality, John F. Peiserich and Michael R. Christian. 49 Idaho L. Rev. 497 (2013).

**§ 47-331. Obligation to pay royalties as essence of contract — Interest.** — (1) The obligation arising under an oil and gas lease to pay oil and gas royalties to the royalty owner or the owner's assignee, to deliver oil and gas to a purchaser to the credit of the royalty owner or the owner's assignee, or to pay a portion of the proceeds of the sale of the oil and gas to the royalty owner or the owner's assignee is of the essence in the lease contract.

(2) Unless otherwise agreed by the parties:

(a) A royalty of no less than twelve and one-half percent (12.5%) of the oil and gas or natural gas plant liquids produced and saved shall be paid. The lessee shall make payments in legal tender unless written instructions for payment in kind have been provided.

(b) Royalty shall be due on all production sold from the leased premises except on that consumed for the direct operation of the producing wells and that lost through no fault of the lessee.

(3) If the operator under an oil and gas lease fails to pay oil and gas royalties to the royalty owner or the owner's assignee within one hundred twenty (120) days after the first production of oil and gas under the lease is marketed, or within sixty (60) days for all oil and ninety (90) days for all gas produced and marketed thereafter, the unpaid royalties shall bear interest at the maximum rate of interest authorized under [section 28-22-104\(1\), Idaho Code](#), from the date due until paid. Provided, however, that whenever the aggregate amount of royalties due to a royalty owner for a twelve (12) month period is less than one hundred dollars (\$100), the operator may remit the royalties on an annual basis without any interest due.

(4) A royalty owner seeking a remedy for failure to make payments under the lease or seeking payments under this section may file a complaint with the commission or may bring an action in the district court pursuant to [section 47-333, Idaho Code](#). The prevailing party in any proceeding brought under this section is entitled to recover court costs and reasonable attorney's fees.

(5) This section does not apply if a royalty owner or the owner's assignee has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

**History.**

I.C., § 47-331, as added by 2017, ch. 271, § 24, p. 677.

**STATUTORY NOTES**

**Prior Laws.**

Former § 47-331, Additional tax on oil and gas produced, which comprised I.C., § 47-331, as added by 1981, ch. 141, § 1, p. 243; am. 1983, ch. 118, § 1, p. 2611, was repealed by S.L. 2012, ch. 79, § 2, effective April 1, 2012.

**Compiler's Notes.**

Chapters 68, 116, and 271 of S.L. 2017 each purported to enact a § 47-331. To retain the integrity of the revision of oil and gas law by chapter 271, the § 47-331 enacted by section 24 of that act was retained at that code number. Section 47-331, as enacted by chapter 116, § 1, was permanently redesignated as § 47-335, pursuant to S.L. 2018, ch. 169, § 15, effective July 1, 2018. Section 47-331, as enacted by chapter 68, § 1, was permanently redesignated as § 47-336, pursuant to S.L. 2018, ch. 169, § 16, effective July 1, 2018.

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

**Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-332. Reports to royalty owners.** — (1) Each royalty payment shall be accompanied by an oil and gas royalty check stub that includes the following information:

(a) Lease or well identification;

(b) Month and year of sales included in the payment; (c) Total volumes of oil, condensate, natural gas liquids or other liquids sold in barrels or gallons, and gas in MCF; (d) Price per barrel, gallon, or MCF, including British thermal unit adjustment of gas sold; (e) Severance taxes attributable to said interest; (f) Net value of total sales attributed to such payment after deduction of severance taxes; (g) Owner's interest in the well, expressed as a decimal to eight (8) places; (h) Royalty owner's share of the total value of sales attributed to the payment before any deductions; (i) Royalty owner's share of the sales value attributed to the payment, less the owner's share of the severance taxes; (j) An itemized list of any other deductions; and (k) An address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered. If information is requested by certified mail, an answer must be mailed by certified mail within thirty (30) days of receipt of the request.

(2) All revenue decimals shall be calculated to at least eight (8) decimal places.

(3) All oil and gas volumes shall be measured by certified and proved meters.

(4) The lessee must maintain, for a period of five (5) years, and make available to the lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the lessor may require to verify the gross production, disposition and market value.

**History.**

I.C., § 47-332, as added by 2017, ch. 271, § 25, p. 677.

## STATUTORY NOTES

### **Prior Laws.**

Former § 47-332, Distribution of revenues, which comprised I.C., § 47-332, as added by 1983, ch. 118, § 2, p. 261, was repealed by S.L. 2012, ch. 79, § 2, effective April 1, 2012.

### **Compiler's Notes.**

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

### **Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-333. Action for accounting for royalty.** — (1) Whenever an owner of a royalty interest makes a written demand for an accounting of the oil and gas produced, but no more frequently than once every twenty-four (24) months, and makes written demand for delivery or payment of his royalty as may then be due upon the person or persons obligated for the delivery or payment of the royalty, and the obligated persons then fail to make the accounting demanded and the payment or delivery of the royalty due within a period of ninety (90) days following the date upon which the demand is made, then the royalty owner may file an action in the district court of the county wherein the lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated.

(2) In such an action, the prevailing party or parties shall be entitled to reasonable attorney's fees to be allowed by the court, together with the costs allowed to a prevailing party, pursuant to [section 12-120, Idaho Code](#).

(3) The remedies under this section are not exclusive and do not abrogate any right or remedy under other laws of this state.

#### **History.**

[I.C., § 47-333](#), as added by 2017, ch. 271, § 26, p. 677.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

#### **Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-334. Use of surface land by owner or operator.** — (1) For the purposes of this section, the following definitions shall apply:

(a) “Surface land” means land upon which oil and gas operations are conducted.

(b) “Crops” means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.

(c) “Surface landowner” means a person who owns all or part of the surface land as shown by the records of the county in which the surface land is located. Surface landowner does not include the surface landowner’s lessee, renter, tenant or other contractually related person.

(d) “Surface landowner’s property” means a surface landowner’s surface land, crops on the surface land and existing improvements on the surface land.

(e) “Surface use agreement” means an agreement between an owner or operator and a surface landowner addressing the use and reclamation of surface land owned by the surface landowner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface landowner’s crops on the surface land, loss of value of existing improvements owned by the surface landowner on the surface land and permanent damage to the surface land.

(2) An owner or operator may:

(a) Enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations; and

(b) Use the surface land:

(i) To the extent reasonably necessary to conduct oil and gas operations; and

(ii) Consistent with allowing the surface landowner the greatest possible use of the surface landowner’s property, to the extent that the surface landowner’s use does not interfere with the owner’s or operator’s oil and gas operations.

(3) Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall:

- (a) Mitigate the effects of accessing the surface landowner's surface land;
- (b) Minimize the interference with the surface landowner's use of the surface landowner's property; and
- (c) Compensate a surface landowner for unreasonable:
  - (i) Loss of a surface landowner's crops on the surface land;
  - (ii) Loss of value to existing improvements owned by a surface landowner on the surface land; and
  - (iii) Permanent damage to the surface land.

(4) For the purposes of this section, an owner or operator is not required to:

- (a) Obtain location or spacing exceptions from the department or commission; or
- (b) Utilize directional or horizontal drilling techniques that are not:
  - (i) Technologically feasible;
  - (ii) Economically practicable; or
  - (iii) Reasonably available.

(5) The provisions of subsection (2) of this section do not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations.

(6)(a) The provisions of this section do not prevent:

- (i) A person from seeking a remedy allowed by law; or
- (ii) An owner or operator and a surface landowner from addressing the use of surface land for oil and gas operations through a lease, a surface use agreement or another written contract.

(b) An agreement described in paragraph (a)(ii) of this subsection shall control:

- (i) The use of surface land for oil and gas operations; and



(ii) Compensation for damage to the surface land caused by oil and gas operations.

(7) A nonbinding mediation may be requested by a surface landowner and an owner or operator by providing written notice to the other party if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface landowner on the surface land, or unreasonable permanent damage to the surface land. A mediator may be mutually selected by a surface landowner and an owner or operator. The surface landowner and the owner or operator shall equally share the cost of the mediator's services. The mediation provisions of this section do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

(8) A surface use bond shall be furnished to the department by the owner or operator in accordance with the following provisions:

(a) A surface use bond does not apply to surface land where the surface landowner is a party or a successor of a party to:

(i) A lease of the underlying privately owned oil and gas;

(ii) A surface use agreement applicable to the surface landowner's surface land; or

(iii) A contract, waiver or release addressing an owner's or operator's use of the surface landowner's surface land.

(b) The surface use bond shall be in the amount of six thousand dollars (\$6,000) per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface landowner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

(c) The surface use bond shall be furnished to the department on a form designed by the department after good faith negotiation and prior to the approval of the application for a permit to drill. The mediation process identified in this section may commence and is encouraged to be completed. The department may accept a surface use bond in the form of a cash account or a certificate of deposit. Interest will remain within the

account. The department may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage. The surface use bond shall remain in effect by the operator until released by the department.

(d) The surface use bond shall be payable to the department for the use and benefit of the surface landowner, subject to this section. The surface use bond shall be released to the owner or operator after the department receives sufficient information that:

- (i) A surface use agreement or other contractual arrangement has been reached;
- (ii) Final resolution of the judicial appeal process for an action for unreasonable damages has occurred and damages have been paid; or
- (iii) Plugging and abandonment of the well is completed.

(e) The department shall make a reasonable effort to contact the surface landowner prior to the department's release of the surface use bond.

### **History.**

I.C., § 47-334, as added by 2017, ch. 271, § 27, p. 677.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 31 of S.L. 2017, ch. 271 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

### **Effective Dates.**

Section 32 of S.L. 2017, ch. 271 declared an emergency. Approved April 6, 2017.

**§ 47-335. Producers — Monthly statements — Idaho state tax commission.** — (1) Every producer engaged in the production of oil or gas from any well or wells in the state shall each month file with the Idaho state tax commission, on forms prescribed by the Idaho state tax commission, a statement containing the information required by subsection (2) of this section relating to the oil or gas produced, saved and sold or transported from the premises in Idaho where produced.

(2) The statement required in subsection (1) of this section shall include:  
(a) The name, description and location of: (i) Every well or wells; and (ii) Every field in which the well or wells are located; and (b) Any other reasonable and necessary information required by the Idaho state tax commission.

(3) The statements required to be filed with the Idaho state tax commission shall be signed and sworn to by the producer or a designee.

(4) The Idaho state tax commission is authorized to conduct audits, relating to producer compliance with the provisions of this section, at least every three (3) years.

**History.**

I.C., § 47-331, as added by 2017, ch. 116, § 1, p. 267; am. and redesign. 2018, ch. 169, § 15, p. 344.

**STATUTORY NOTES**

**Cross References.**

State tax commission, § 63-101.

**Prior Laws.**

Former § 47-331 was redesignated as § 47-335 by S.L. 2018, ch. 169, § 15, effective July 1, 2018.

**Amendments.**

The 2018 amendment, by ch. 169, redesignated the section from § 47-331.

**Compiler's Notes.**

Chapters 68, 116, and 271 of S.L. 2017 each purported to enact a § 47-331. To retain the integrity of the revision of oil and gas law by chapter 271, the § 47-331 enacted by section 24 of that act was retained at that code number. Section 47-331, as enacted by chapter 116, § 1, was permanently redesignated as § 47-335, pursuant to S.L. 2018, ch. 169, § 15, effective July 1, 2018. Section 47-331, as enacted by chapter 68, § 1, was permanently redesignated as § 47-336, pursuant to S.L. 2018, ch. 169, § 16, effective July 1, 2018.

**§ 47-336. Interstate compact for conservation of oil and gas ratified.**

— (1) The state of Idaho does hereby ratify, approve, adopt and confirm the interstate compact to conserve oil and gas heretofore executed in the city of Dallas, Texas, on February 16, 1935, and is now deposited with the department of state of the United States and which has been extended with the consent of congress to September 1, 1947, which said compact is substantially as follows:

INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico have ratified and congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio.
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.
- (c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.
- (d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

#### ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

#### ARTICLE V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

#### ARTICLE VI

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as "The Interstate Oil Compact Commission," the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have the power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the

petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) by the affirmative votes of the majority of the whole number of the compacting states represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

## ARTICLE VII

No state joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

## ARTICLE VIII

This compact shall continue in effect until congress withdraws its consent. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in article I of this compact. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

(2) Notice of approval of said compact shall be given by the governor of Idaho to the interstate oil and gas compact commission (IOGCC) and to the department of state of the United States.

(3) That the governor of the state of Idaho be and hereby is authorized and empowered, for and on behalf of the state of Idaho, to determine when and if it shall be for the best interests of the state of Idaho to withdraw from

said compact, upon sixty (60) days' notice, as provided by terms thereof, and in the event he shall determine that the state should withdraw from said compact, he shall have full power and authority to give necessary notice and take any and all other steps necessary to effect the withdrawal of the state of Idaho from said compact.

(4) The governor of the state of Idaho shall appoint one (1) representative of the state of Idaho to the IOGCC, whose duty and authority on behalf of the state of Idaho shall be as provided in said compact.

### **History.**

I.C., § 47-331, as added by 2017, ch. 68, § 1, p. 165; am. and redesign. 2018, ch. 169, § 16, p. 344.

## **STATUTORY NOTES**

### **Amendments.**

The 2018 amendment, by ch. 169, redesignated the section from § 47-331.

### **Compiler's Notes.**

Chapters 68, 116, and 271 of S.L. 2017 each purported to enact a § 47-331. To retain the integrity of the revision of oil and gas law by chapter 271, the § 47-331 enacted by section 24 of that act was retained at that code number. Section 47-331, as enacted by chapter 116, § 1, was permanently redesignated as § 47-335, pursuant to S.L. 2018, ch. 169, § 15, effective July 1, 2018. Section 47-331, as enacted by chapter 68, § 1, was permanently redesignated as § 47-336, pursuant to S.L. 2018, ch. 169, § 16, effective July 1, 2018.

For more on the interstate compact to conserve oil and gas, see <http://apps.csg.org/ncic/Compact.aspx?id=81>.





## Chapter 4

### GENERAL SAFETY REGULATIONS

Sec.

47-401 — 47-431. [Repealed.]

**§ 47-401 — 47-431. General safety regulations for mines. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1909, p. 266, §§ 1 to 31; am. 1915, ch. 46, § 1; reen. C.L. §§ 229:1 to 229:31; C.S., §§ 5485 to 5515; am. 1923, ch. 131, § 1, p. 192; I.C.A., §§ 46-401 to 46-431; am. 1963, ch. 18, §§ 1 to 10, p. 154, were repealed by S.L. 1969, ch. 35, § 1 as of October 1, 1969 which provided that the mine inspector was directed to prepare and take steps necessary to adopt regulations as might be necessary to carry on his duties pertaining to mine safety and health inspection so that said regulations might become effective upon such date of repeal.



## Chapter 5

### DUST PREVENTION

Sec.

47-501 — 47-504. [Repealed.]

**§ 47-501 — 47-504. Dust prevention — Procedures — Penalty for violation. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1917, ch. 86, §§ 1 to 4, p. 302; reen. C.L. §§ 229:32 to 229:35; C.S., §§ 5516 to 5519; I.C.A., §§ 46-501 to 46-504; am. 1963, ch. 18, §§ 11, 12, p. 154, were repealed by S.L. 1969, ch. 35, § 1 as of October 1, 1969 which provided that the mine inspector was directed to prepare and take steps necessary to adopt regulations as might be necessary to carry on his duties pertaining to mine safety and health inspection so that said regulations might become effective upon such date of repeal.



## Chapter 6

### LOCATION OF MINING CLAIMS

Sec.

47-601. Mining claim locations authorized.

47-602. Method of locating mining claim.

47-603, 47-603A. [Repealed.]

47-604. Notice must be recorded.

47-605. Record of additional certificate.

47-606. Affidavit of performance of labor — Notice of acceptance of waiver, suspension or extension — Fees — Effect as evidence.

47-607. Location of abandoned claim.

47-608. Notice must claim only one location.

47-609. Security to surface owners — Injunction.

47-610. Deputy recorders — Appointment — Term of service. [Repealed.]

47-611. Affidavit of locators.

47-612. Manner of recording notices.

47-613. Certain surveys may qualify as annual labor.

47-614. Definitions.

47-615 — 47-617. [Repealed.]

47-618. Lode and placer claims — Official patent survey as labor on improvement.

47-619. Lode and placer claims — Official patent survey as credit on annual assessment work.



**§ 47-601. Mining claim locations authorized.** — Persons are authorized to locate mining claims upon that public domain in the state of Idaho which is open to location under the mining laws of the United States. The location of a mining claim shall be made by posting notice of location and by marking the boundaries as provided in section 47-602[, Idaho Code] of this chapter.

**History.**

I.C., § 47-601, as added by 1970, ch. 92, § 2, p. 227.

**STATUTORY NOTES**

**Cross References.**

Mechanics' and materialmen's liens on mining claims, § 45-501.

Mining partnerships, § 53-401.

**Prior Laws.**

Former § 47-601, which comprised S.L. 1881, p. 262, § 1; R.S., § 3100; am. 1895, p. 25, § 1; reen. 1899, p. 237, § 1; reen. R.C., § 3206; C.L., § 3206; C.S., § 5520; I.C.A., § 46-601, was repealed by S.L. 1970, ch. 92, § 1.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Federal Standards.**

Although standards for the location of mining claims have been set by federal statute (30 U.S.C.S. § 26), the state can exercise its police power to impose additional nonconflicting requirements. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

**Cited** *Clearwater Minerals Corp. v. Presnell*, 111 Idaho 945, 729 P.2d 420 (Ct. App. 1986).

Decisions Under Prior Law **Discovery unnecessary.**

**Excessive location.**

**Seniority of discovery.**

**Discovery Unnecessary.**

It was not essential that the locator of a mining claim be the first discoverer of a vein or lode in order to make a valid location, and if it appeared the locator knew at the time of making his location that there had been a discovery of a vein or lode within the limits of his location, he could base his location upon it and, thus, avoid the necessity of making a discovery for himself. *Allen v. Laudahn*, 59 Idaho 207, 81 P.2d 734 (1938).

**Excessive Location.**

Where the exterior boundaries of a mineral location included such an unreasonably excessive area that such boundary lines could not be said to impart notice to prospector of mineral location or discovery within reasonable distance of a lawful claim as located under former statute, such location would be held void. *Nicholls v. Lewis & Clark Mining Co.*, 18 Idaho 224, 109 P. 846 (1910).

**Seniority of Discovery.**

Where one miner had discovered what he considered mineral indications and deposits, and had followed up the discovery by staking a claim, and doing the necessary location work, and another miner came along and made a discovery and located a part or all of the same ground covered by the former location, and thereupon went into court and contested the senior location, and in order to sustain that contention, showed that the ground did, in fact, contain valuable mineral deposits and at the same time contended that the senior locator had not made a mineral discovery, the courts would not examine the evidence of the senior discovery with very great strictness. *Allen v. Laudahn*, 59 Idaho 207, 81 P.2d 734 (1938).

**§ 47-602. Method of locating mining claim.** — The locator of a mining claim must at the time of making his location designate his claim by posting at one (1) corner of the claim his notice of location in writing in which there shall be stated:

1. The name of the locator or locators.
2. The name of the claim and whether located as a lode mining claim or as a placer mining claim.
3. The date of the location and the mining district, if any, and the county in which the claim is located.
4. The directions and distances which describe the claim.
5. The direction and distance from the corner where notice is posted to such natural object or permanent monument, if any such there be, as will fix and describe in the notice itself the site of the claim.

Before recording his notice of location, the locator must mark the boundaries of his mining claim by placing at each corner or angle of the claim a substantial monument or a post at least four (4) feet in height and four (4) inches square or in diameter. Each post and monument shall be marked with the name of the claim, the position or number of the corner or angle and the direction of the boundary lines. The locator shall mark the boundary lines so that they can be readily traced. Where it is impracticable to place a monument or post in its true position, a witness monument shall be erected and marked to indicate the true position of the corner or angle.

### **History.**

I.C., § 47-602, as added by 1970, ch. 92, § 4, p. 227.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 47-602, which comprised S.L. 1881, p. 262, §§ 2, 3; R.S., § 3101; am. 1895, p. 25, § 2; reen. 1899, p. 237, § 2; am. 1899, p. 440, § 1;

reen. R.C., § 3207; C.L., § 3207; C.S., § 5521; I.C.A., § 46-602, was repealed by S.L. 1970, ch. 92, § 3.

## CASE NOTES

**Cited** *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984); *Golden Condor, Inc. v. Bell*, 112 Idaho 1086, 739 P.2d 385 (1987).

### Decisions Under Prior Law

Actual notice.

Adverse possession.

Conflicting claims.

Construction.

Decisions under federal statutes.

Duplication of names.

Excessive location.

Location by agent.

Marking a mandatory requirement.

Marking exterior boundaries.

Necessity of discovery.

Notice held insufficient.

Notice held sufficient.

Sufficiency of notice.

Valid location.

### **Actual Notice.**

If locator had actual notice that ground in controversy had been located, as well as constructive notice by an examination of recorded notice, no technicalities would be resorted to to sustain his relocation of the same ground. *Flynn Group Mining Co. v. Murphy*, 18 Idaho 266, 109 P. 851 (1910).

Object of former statute was to give notice of location of claim, and, when subsequent locator had actual knowledge of location of claim, he was not misled by deficient description and could not take advantage of it. [Sellers v. Taylor, 48 Idaho 116, 279 P. 617 \(1929\).](#)

### **Adverse Possession.**

Under [30 U.S.C.S. § 28](#), claimant to mineral lands, who had been in open, exclusive adverse possession of a claim for a continuous period equal to that required by local statute of limitations governing adverse possession of real estate, was relieved of necessity of making proof of posting and recording a notice of location and such other proofs as were usually furnished by county recorder. [Humphreys v. Idaho Gold Mines Dev. Co., 21 Idaho 126, 120 P. 823 \(1912\).](#)

### **Conflicting Claims.**

Location and discovery on land withdrawn quoad hoc from public domain by valid and subsisting mining claim was absolutely void for purpose of founding contradictory right. [Swanson v. Sears, 224 U.S. 180, 32 S. Ct. 455, 56 L. Ed. 721 \(1912\).](#)

Since rights of conflicting locators to unpatented mining claim were subject to paramount title of United States, they could be subject of only possessory action and not action to quiet title in true sense of that term. [Hedrick v. Lee, 39 Idaho 42, 227 P. 27 \(1924\).](#)

Complaint in actions of conflicting claims should have described same by metes and bounds or set forth location notices, but reference in complaint to location notices on file in office of county recorder saved it as against general demurrer. [Hedrick v. Lee, 39 Idaho 42, 227 P. 27 \(1924\).](#)

### **Construction.**

Provisions of former section as to erecting monuments and placing thereon name of locator and claim were mandatory. [Buckeye Mining Co. v. Powers, 43 Idaho 532, 257 P. 833 \(1927\).](#)

### **Decisions under Federal Statutes.**

Provisions of [30 U.S.C.S. § 28](#) were intended to obviate necessity for proof of posting and recording notice of location in cases where claimant had been in actual, open, and exclusive possession for period equal to that

prescribed by local statute of limitations, governing adverse possession of real estate. *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

Purchaser urging forfeiture of interests in unpatented mining claim had burden of showing strict compliance with 30 U.S.C.S. § 28. *Porter v. Jugovich*, 47 Idaho 682, 278 P. 219 (1929).

Locator of lode mining claim, who allowed his location to lapse by failure to perform required assessment work, could have made new location covering same ground. *Sellers v. Taylor*, 48 Idaho 116, 279 P. 617 (1929).

### **Duplication of Names.**

Under former section a claim had to be named, but there could have been many claims of the same name in the same county, and use of such mining claim name on the assessment roll and in a tax deed was insufficient to pass title. *Meneice v. Blackstone Mining Co.*, 63 Idaho 413, 121 P.2d 450 (1942).

### **Excessive Location.**

Where, in locating claim, amount included was by mistake in excess of that allowed by law, excess could have been rejected and claim held good for remainder, unless it interfered with rights previously acquired. *Stemwinder Mining Co. v. Emma & Last Chance Consol. Mining Co.*, 149 U.S. 787, 13 S. Ct. 1052, 37 L. Ed. 960 (1892).

Extralateral rights were dependent on continuity of lode. See *Utah Consol. Mining Co. v. Utah Apex Mining Co.*, 277 F. 41 (8th Cir. 1921), cert. denied, 258 U.S. 619, 42 S. Ct. 272, 66 L. Ed. 794 (1922); *Utah Consol. Mining Co. v. Utah Apex Mining Co.*, 285 F. 249 (8th Cir. 1922), cert. denied, 261 U.S. 617, 43 S. Ct. 362, 67 L. Ed. 829 (1923).

Where an excessive mineral location had been made through mistake, while locator was acting in good faith, location would be void only as to excess; but where locator had purposely included within his exterior boundaries an excessive area with fraudulent intent of holding entire area under one location, such location was void; or if made so large that the location could not be deemed result of innocent error or mistake, fraud would be presumed. *Nicholls v. Lewis & Clark Mining Co.*, 18 Idaho 224, 109 P. 846 (1910); *Flynn Group Mining Co. v. Murphy*, 18 Idaho 266, 109 P. 851 (1910).

### **Location by Agent.**

Agent for locator could do things required by former section in locating claim. *Dunlap v. Pattison*, 4 Idaho 473, 42 P. 504 (1895).

### **Marking a Mandatory Requirement.**

The former statutory enumeration of things to be done to make a valid location of a mining claim was specific; and the requirement that the location monument be marked with the name of the claim was mandatory. *Norrie v. Fleming*, 62 Idaho 381, 112 P.2d 482 (1941).

Whether notice and description of claim were sufficient to apprise other prospectors of its precise location was question of fact and not of law. *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

### **Marking Exterior Boundaries.**

It took more than posting of a discovery notice to constitute a valid location. It was just as essential that exterior boundaries be marked. *Nicholls v. Lewis & Clark Mining Co.*, 18 Idaho 224, 109 P. 846 (1910).

### **Necessity of Discovery.**

Vein or lode should have been discovered before valid location could be made thereon; one could not locate quartz claim on porphyry, granite, limestone, or quartzite unless he had previously discovered vein or lode. *Ambergris Mining Co. v. Day*, 12 Idaho 108, 85 P. 109 (1906).

### **Notice Held Insufficient.**

Location which was tied to a natural object or permanent monument, described as the mouth of Big Canyon, and which fixed the discovery stake at six hundred feet from such monument, without indicating direction from point of discovery, was void. *Clearwater Short-Line Ry. v. San Garde*, 7 Idaho 106, 61 P. 137 (1900).

Location notices placed on flat rock or in tobacco can on ground were held insufficient. *Buckeye Mining Co. v. Powers*, 43 Idaho 532, 257 P. 833 (1927).

### **Notice Held Sufficient.**

Location notice describing claim as “Commencing at this stake and notice which was situated about 300 feet in a northwesterly direction from the Minnesota mine; that it was an extension of the Red Jacket mine and running thence along the vein or lode in an easterly direction to a similar stake and notice,” was sufficient. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902).

Located mining claim was natural object or landmark, or fixed object which could be referred to in location notice. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902); *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

Presumption was that claim named as monument in location notice existed, and burden of showing nonexistence was upon party attacking notice. *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

### **Sufficiency of Notice.**

Location notice must have described claim by reference to some natural object or permanent monument which would identify claim and would furnish reasonable certainty that locus of claim had not been, and could not well be, changed; reference must have been such as would enable skilled engineer to identify claim without reference to contiguous claims, location of which were uncertain, and courses and distances from permanent monument to discovery stakes or corner stakes must have been stated with reasonable accuracy. *Brown v. Levan*, 4 Idaho 794, 46 P. 661 (1896).

Where location certificate contains reference to landmark, it should not have been declared insufficient upon mere inspection of certificate and in absence of evidence, unless it clearly failed to identify claim. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902).

Where the location of mining claim was made in good faith, court would not hold locator to a very strict compliance with the law in respect to his location notice. If by any reasonable construction, in view of surrounding circumstances, language employed in description would impart notice to subsequent locators, it was sufficient. Natural objects or permanent monuments referred to in statutes could have been on ground located, or off. *Bismarck Mt. Gold Mining Co. v. North Sunbeam Gold Co.*, 14 Idaho 516, 95 P. 14 (1908); *Snowy Peak Mining Co. v. Tamarack & Chesapeake*



Mining Co., 17 Idaho 630, 107 P. 60 (1910); Law v. Fowler, 45 Idaho 1, 261 P. 667 (1927).

Intent of prior law was to require locator to make his location so definite and certain that, from location notice and stakes and monuments on ground, limits and boundaries of the claim could have been readily ascertained, and so definite and certain as to have prevented changing or floating of claim. *Flynn Group Mining Co. v. Murphy*, 18 Idaho 266, 109 P. 851 (1910).

Location notice was not required to describe exterior boundaries of claim. *Flynn Group Mining Co. v. Murphy*, 18 Idaho 266, 109 P. 851 (1910).

Sufficiency of description of property or tie to a natural object or permanent monument was open to explanation by other evidence than notices to show whether or not property could have been definitely identified from such description. *Humphreys v. Idaho Gold Mines Dev. Co.*, 21 Idaho 126, 120 P. 823 (1912).

Description which was so erroneous as to be delusive and misleading rendered location void. *Swanson v. Koeninger*, 25 Idaho 361, 137 P. 891 (1913).

Location notices had to be placed upon monument in manner sufficiently conspicuous to be observed. *Buckeye Mining Co. v. Powers*, 43 Idaho 532, 257 P. 833 (1927).

### **Valid Location.**

Valid location with continued compliance with law gave exclusive right to ground within lines. *Swanson v. Kettler*, 17 Idaho 321, 105 P. 1059, aff'd, 224 U.S. 180, 33 S. Ct. 455, 56 L. Ed. 721 (1909).

Right to follow vein on its dip beyond surface lines of lode location existed only when apex of such vein lay inside such lines. *Stewart Mining Co. v. Ontario Mining Co.*, 237 U.S. 350, 35 S. Ct. 610, 59 L. Ed. 989 (1915).

Decision of state supreme court adverse to contentions of owner of lode mining claim founded upon apex and extra lateral rights provisions of former act did not rest upon nonfederal ground so as to defeat jurisdiction

of supreme court of United States. Stewart Mining Co. v. Ontario Mining Co., 237 U.S. 350, 35 S. Ct. 610, 59 L. Ed. 989 (1915).

**§ 47-603, 47-603A. Shaft must be sunk — Relocation — Open cuts and drill holes in lieu of shaft. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

These sections, which comprised S.L. 1895, p. 25, § 3; reen. 1899, p. 237, § 3; reen. R.C., § 3208; C.L., § 3208; C.S., § 5522; I.C.A., § 46-603; I.C., § 47-603A, as added by 1957, ch. 71, § 1, p. 118, were repealed by S.L. 1970, ch. 92, §§ 5, 6, respectively.

**§ 47-604. Notice must be recorded.** — Within ninety (90) days after the location of the claim the locator or his assigns must file for record in the office of the county recorder of the county in which the claim is situated, a copy of his notice of location. Failure to file notice of location for record within ninety (90) days after location of the claim shall constitute an abandonment of the claim.

### **History.**

1895, p. 25, § 4; reen. 1899, p. 237, § 4; reen. R.C., § 3209; C.L., § 3209; C.S., § 5523; I.C.A., § 46-604; am. 1970, ch. 92, § 7, p. 92.

## **STATUTORY NOTES**

### **Cross References.**

Notices of preemption claims to be recorded by county recorder, § 31-2402.

## **CASE NOTES**

[Adverse possession.](#)

[Notice is prima facie evidence.](#)

### **Adverse Possession.**

Under [30 U.S.C.S. § 38](#), claimant to mineral lands who has been in adverse possession for continuous period equal to that required by local statute of limitations is relieved of necessity of making proof of recording a notice of location. [Humphreys v. Idaho Gold Mines Dev. Co., 21 Idaho 126, 120 P. 823 \(1912\).](#)

It still remains for persons who assert claim by adverse possession to have mineral discovery and perform assessment work. They must also mark boundaries of claim so as to afford actual notice of extent of possession and exclude all adverse claimants for full period of statute. They must likewise maintain possession and occupancy during subsequent period when adverse

locator attempts to initiate right by locating claim. *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

Possession of unpatented mining claims is actual possession, not constructive possession. “Actual possession” means something more than mere compliance with requirements of assessment work. *Law v. Fowler*, 45 Idaho 1, 261 P. 667 (1927).

Adverse claimant of mining right must institute action within thirty days from filing adverse claim or within ninety days of first publication of notice, or court has no jurisdiction to pass upon his claim. *Little v. Morris*, 48 Idaho 740, 284 P. 1029 (1930).

### **Notice is Prima Facie Evidence.**

Location notice or certificate, when recorded, is prima facie evidence of all facts statute requires it to contain, and which are therein sufficiently set forth. *Bismarck Mt. Gold Mining Co. v. North Sunbeam Gold Co.*, 14 Idaho 516, 95 P. 14 (1908).

**Cited** *Bunker Chance Mining Co. v. Bex*, 90 Idaho 47, 408 P.2d 170 (1965).

**§ 47-605. Record of additional certificate.** — If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing the surface boundaries, or of taking any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this chapter, such locator or his assigns may file an additional certificate subject to the conditions of this chapter, and to contain all that this chapter requires an original certificate to contain: provided, that such amended location does not interfere with the existing rights of others at the time when such amendment is made.

**History.**

1895, p. 25, § 5; reen. 1899, p. 237, § 5; reen. R.C. & C.L., § 3210; C.S., § 5524; I.C.A., § 46-605.

**CASE NOTES**

**Amended Locations.**

Amended location may be made by any one having authority to make same, and such authority need not be in writing. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902).

Proviso of this section, that amended locations do not interfere with existing rights of others at time of amendment, applies only to changes of boundaries or to cases where part of an overlapping claim which has been abandoned is taken in, and does not apply to amended locations by which surface boundaries are not changed, or where no part of an overlapping claim is taken in. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902).

Amended certificate may cure a defective or erroneous original certificate and relates back to date of original certificate, unless such original is absolutely void, or where rights of others have intervened between date of original and amended locations. *Morrison v. Regan*, 8 Idaho 291, 67 P. 955 (1902).

Amended locations, where they do not interfere with existing rights, relate back to date of original locations. **Bismarck Mt. Gold Mining Co. v. North Sunbeam Gold Co.**, 14 Idaho 516, 95 P. 14 (1908).

**§ 47-606. Affidavit of performance of labor — Notice of acceptance of waiver, suspension or extension — Fees — Effect as evidence. —**

Within sixty (60) days after any time set or period allowed for the performance of labor, or making improvements upon any lode or placer claim, the person in whose behalf such work or improvement is performed or some person for him, must make and record an affidavit in substance as follows:

State of Idaho, county of . . . ., ss.

Before me, the subscriber, personally appeared . . . ., who being first duly sworn says, that at least . . . . dollars worth of work or improvements were performed or made upon . . . . claim, situate in . . . . mining district, County of . . . ., State of Idaho: That such expenditure was made by, for, or at the expense of . . . ., owner of said claim, for the purpose of holding said claim; all stakes, monuments or trees marking boundaries of said claim are in proper place and position.

Subscribed and sworn to before me this . . . . day of . . . ., .....

The fee for administering the oath and recording the foregoing affidavit, when taken before any county recorder, shall be as provided by [section 31-3205, Idaho Code](#).

Such affidavit, or a certified copy thereof in case the original is lost, shall be prima facie evidence of the performance of such labor. The failure to file such affidavit shall be considered prima facie evidence that such labor has not been done.

When the performance of annual labor upon any lode or placer claim is suspended, extended or waived by act of congress of the United States, and provision is therein made for filing or recording a notice, affidavit or statement by the claimant or other person for him, accepting the provisions of said act, then the same shall be filed as herein provided for affidavit of performance of annual labor, and the same fees shall be charged therefor and the same effect shall be given thereto, and the same presumptions shall arise therefrom as provided herein for said affidavit of performance of annual labor.



## **History.**

R.S., § 3101; am. 1899, p. 237, § 6; am. 1899, p. 440, § 2; reen. R.C., § 3211; am. 1913, ch. 72, § 1, p. 308; reen. C.L., § 3211; C.S., § 5525; I.C.A., § 46-606; am. 1945, ch. 114, § 1, p. 176; am. 1951, ch. 251, § 2, p. 540; am. 1957, ch. 171, § 1, p. 306; am. 1959, ch. 72, § 2, p. 157; am. 1970, ch. 92, § 8, p. 227; am. 1976, ch. 281, § 4, p. 962; am. 1982, ch. 207, § 1, p. 570; am. 2002, ch. 32, § 19, p. 46.

## **STATUTORY NOTES**

### **Cross References.**

Official patent survey as improvement, § 47-618; as assessment work, § 47-619.

## **CASE NOTES**

Burden of proof.

Correction of affidavit.

Evidence.

Forfeiture of corporate charter.

Presumption raised by filing.

Prima facie evidence overcome.

Weight of evidence.

### **Burden of Proof.**

One who adversely claims title to a mining claim by forfeiture and relocation must prove by clear and convincing evidence that the annual labor was not performed and must prove that his or her own locations are valid. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

Although an adverse claimant has the ultimate burden of proof — i.e., the risk of nonpersuasion — on the question of whether annual labor was performed, the party asserting that such work was done has an initial burden of going forward with prima facie evidence and the filing of an affidavit

under this section suffices to meet this initial burden; the adverse claimant must overcome the affidavit or other prima facie proof by clear and convincing evidence that the work was not performed. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

### **Correction of Affidavit.**

If a mistake is made in such notice, it may be corrected by oral evidence. Fact as to whether work was done is main question, and not its method of proof. *Bismarck Mt. Gold Mining Co. v. North Sunbeam Gold Co.*, 14 Idaho 516, 95 P. 14 (1908).

Where affidavit listed wrong person as the owner of the claims and incorrectly identified name of claim, but competent evidence was adduced at trial to explain these deficiencies, they were not fatal. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

### **Evidence.**

The district did not err in finding that the assessment work had been performed where there was testimony concerning the labor and an affidavit was filed. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

### **Forfeiture of Corporate Charter.**

Temporary forfeiture of corporate charter did not, of itself, result in forfeiture of the mining claims. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

Once claimant of relocated mining claim presented evidence refuting owner's annual affidavit, the issue of whether the work had been performed was no longer governed by the prima facie effect of the affidavit; rather, the issue then turned upon a weighing of the conflicting evidence. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

### **Presumption Raised by Filing.**

Presumption is raised when defendants in quiet title suit to mining claim supported their contention that annual trips were made to the property and gold recovered therefrom by the facts that each fall one defendant returned from mining trip with gold, that defendants were seen from time to time on the property mining and prospecting, and that they made and filed affidavits

of having done annual assessment work. *Independence Placer Mining Co. v. Hellman*, 62 Idaho 180, 109 P.2d 1038 (1941).

### **Prima Facie Evidence Overcome.**

When prima facie evidence is met and overcome by positive evidence that labor had not been performed, it then devolves upon the respondent to show by evidence of a positive and affirmative nature other than affidavit that work had actually been performed. *Dickens-West Mining Co. v. Crescent Mining & Milling Co.*, 26 Idaho 153, 141 P. 566 (1914).

### **Weight of Evidence.**

Once claimant of relocated mining claim presented evidence refuting owner's annual affidavit, the issue of whether the work had been performed was no longer governed by the prima facie effect of the affidavit, rather, the issue then turned upon a weighing of the conflicting evidence. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

**Cited** *Empire Copper Co. v. Henderson*, 15 Idaho 635, 99 P. 127 (1908); *Clearwater Minerals Corp. v. Presnell*, 111 Idaho 945, 729 P.2d 420 (Ct. App. 1986).

**§ 47-607. Location of abandoned claim.** — The location of abandoned claims shall be done in the same manner as if the location were of a new claim including the erection of new posts or monuments.

**History.**

1895, p. 25, § 7; reen. 1899, p. 237, § 7; reen. R.C., § 3212; C.L., § 3212; C.S., § 5526; I.C.A., § 46-607; am. 1970, ch. 92, § 9, p. 227.

**CASE NOTES**

**Cited** *Weigle v. Salmino*, 49 Idaho 522, 290 P. 552 (1930).

**§ 47-608. Notice must claim only one location.** — No location notice shall claim more than one location, whether the location is made by one or several locators, and if it purport to claim more than one location it is absolutely void.

**History.**

1895, p. 25, § 8; reen. 1899, p. 237, § 8; reen. R.C. & C.L., § 3213; C.S., § 5527; I.C.A., § 46-608.

**§ 47-609. Security to surface owners — Injunction.** — When the right to mine is in any case separate from the ownership or right of occupancy of the surface ground, the owners or rightful occupants of the surface ground may demand satisfactory security from the miners, and if it be refused or not given, may enjoin such miners from working such ground until such security is given. The court granting the writ of injunction shall fix the amount and nature of the security.

**History.**

1895, p. 25, § 10; reen. 1899, p. 237, § 10; reen. R.C. & C.L., § 3214; C.S., § 5528; I.C.A., § 46-609.

**§ 47-610. Deputy recorders — Appointment — Term of service.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1881, p. 262, § 4; R.S., § 3103; am. 1895, p. 25, § 9; reen. 1899, p. 237, § 9; reen. R.C., § 3215; C.L., § 3215; C.S., § 5529; am. 1931, ch. 114, § 1, p. 195; I.C.A., § 46-610, was repealed by S.L. 1970, ch. 92, § 10.

**§ 47-611. Affidavit of locators.** — At or before the time of presenting a location notice for record, whether it be for a quartz lode or placer claim, one (1) of the locators named in the same must make and subscribe an affidavit, in writing on or attached to the notice, substantially in the following form, to wit:

State of Idaho, county of ....., ss.

I, ....., do solemnly swear that I am a citizen of the United States of America (or have declared my intentions to become such), and that I am acquainted with the mining ground described in this notice of location, and herewith called the .... lode or placer claim; that the ground and claim therein described or any part thereof has not, to the best of my knowledge and belief, been previously located according to the laws of the United States and this state, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply in respect thereto with the requirements of said laws.

.....

Signature

Subscribed and sworn to before me this .... day of .... ..

.....

Signature

### **History.**

1880, p. 262, § 5; R.S., § 3104; am. 1895, p. 25, § 13; reen. 1899, p. 237, § 13; reen. R.C., § 3216; C.L., § 3216; C.S., § 5530; I.C.A., § 46-611; am. 1970, ch. 92, § 11, p. 227; am. 2002, ch. 32, § 20, p. 46.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

## **CASE NOTES**



Affidavit by agent.

Validity and construction.

### **Affidavit by Agent.**

Agent or attorney in fact may locate a mining claim for his principal and may make affidavit required by this section. *Dunlap v. Pattison*, 4 Idaho 473, 42 P. 504 (1895).

### **Validity and Construction.**

This section in requiring an affidavit to location notice prescribes a reasonable regulation and is not in conflict with 30 U.S.C.S. § 26. *Van Buren v. McKinley*, 8 Idaho 93, 66 P. 936 (1901).

Affidavit as required by this section is necessary to a valid location. *Van Buren v. McKinley*, 8 Idaho 93, 66 P. 936 (1901).

**Cited** *Bismarck Mt. Gold Mining Co. v. North Sunbeam Gold Co.*, 14 Idaho 516, 95 P. 14 (1908); *Independence Placer Mining Co. v. Hellman*, 62 Idaho 180, 109 P.2d 1038 (1941).

**§ 47-612. Manner of recording notices.** — The location notice herein required to be recorded must be recorded in the office of the county recorder of the county in which the claim is located (when the legal fee therefor is tendered), in a book kept for that purpose. Said book must be indexed, with the names of all the locators arranged in alphabetical order, according to the family or surname of each.

**History.**

1880, p. 262, § 6; R.S., § 3105; am. 1895, p. 25, § 14; reen. 1899, p. 237, § 14; reen. R.C. & C.L., § 3217; C.S., § 5531; am. 1931, ch. 114, § 2, p. 195; I.C.A., § 46-612; am. 1937, ch. 7, § 1, p. 18; am. 1957, ch. 170, § 1, p. 305; am. 1970, ch. 92, § 12, p. 227; am. 1976, ch. 281, § 5, p. 962.

**STATUTORY NOTES**

**Cross References.**

Fees of county recorder for administering oath to locator and certifying same, § 31-3205.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 47-613. Certain surveys may qualify as annual labor.** — Annual assessment work or labor upon a mining claim as required by the United States mining laws shall be defined to include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed for record in the office of the county recorder of the county in which the claim is located which sets forth fully (1) the location of the work performed in relation to the boundaries of the claim, (2) the nature, extent, and costs thereof, (3) the basic findings therefrom, and (4) the name, address, and professional background of the person or persons conducting the work. Surveys of this kind, however, may not be applied as labor for more than two (2) consecutive years or for more than a total of five (5) years on any one (1) mining claim, and each of these surveys shall be nonrepetitive of any previous survey on the same claim.

**History.**

I.C., § 47-613, as added by 1970, ch. 92, § 18, p. 227.

**STATUTORY NOTES**

**Prior Laws.**

Former § 47-613, which comprised S.L. 1881, p. 262, § 7; R.S., § 3106; reen. R.C., § 3218; C.L., § 3218; C.S., § 5532; I.C.A., § 46-613, was repealed by S.L. 1970, ch. 92, § 13.

**§ 47-614. Definitions.** — As used in section 47-613[, Idaho Code]:

(1) the term “geological surveys” means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) the term “geochemical surveys” means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) the term “geophysical surveys” means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods measuring physical differences between rock types or discontinuities in geological formations;

(4) the term “qualified expert” means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys.

**History.**

I.C., § 47-614, as added by 1970, ch. 92, § 19, p. 227.

**STATUTORY NOTES**

**Prior Laws.**

Former § 47-614, which comprised S.L. 1903, p. 290, § 1; am. R.C., § 3219; C.L., § 3219; C.S., § 5533; I.C.A., § 46-614, was repealed by S.L. 1970, ch. 92, § 14.

**Compiler’s Notes.**

The bracketed insertion at the end of the introductory language was added by the compiler to conform to the statutory citation style.

**§ 47-615 — 47-617. Seal of deputies — Limitation on powers — Placer claims — Location.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1881, p. 262, § 8; 1895, p. 25, §§ 11, 12; 1897, p. 13, § 1; 1899, p. 237, §§ 11, 12; R.S., § 3107; R.C., §§ 3220 to 3222; C.L., §§ 3220 to 3222; C.S., §§ 5534 to 5536; I.C.A., §§ 46-615 to 46-617, were repealed by S.L. 1970, ch. 92, §§ 15-17, respectively.

**§ 47-618. Lode and placer claims — Official patent survey as labor on improvement.** — It is hereby declared that an official patent survey of a lode or placer mining claim or claims by a United States mineral surveyor constitutes and is labor performed upon an improvement made upon or for the benefit of an unpatented lode or placer mining claim or claims.

**History.**

C.S., § 5536-A, as added by 1929, ch. 194, § 1, p. 361; I.C.A., § 46-618.

**§ 47-619. Lode and placer claims — Official patent survey as credit on annual assessment work.** — An official patent survey of a lode or placer mining claim or claims by a United States mineral surveyor may be credited to annual assessment work or labor, but in no case shall the credit for such survey and its attendant expense exceed the required assessment for one (1) year on the claim or claims surveyed. When credit is sought for such work or improvement, the claimant must file in the recorder's office in the county in which such claim is situated the affidavit of such United States mineral surveyor, showing the cost of such survey, and when so filed the actual cost of such survey shall be deemed and considered as labor and improvements done and performed upon said claim or claims.

**History.**

C.S., § 5536-B, as added by 1929, ch. 194, § 2, p. 361; I.C.A., § 46-619.





## Chapter 7

### MINERAL RIGHTS IN STATE LANDS

Sec.

47-701. Reservation of mineral deposits to state — Terms defined.

47-701A. Definition.

47-702. Right of exploration and withdrawal.

47-703. Exploration locations on state lands.

47-703A. Exploration on state lands — Bond.

47-704. Leases of mineral rights in state lands.

47-705. Appraisal of improvements — Term construed.

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47-707. Forfeiture of leases.

47-708. Rights and liabilities of lessees.

47-709. Mines operated under lease — Inspection by board.

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47-714. Leases of navigable river beds authorized.

47-715. Collection of royalties by board of land commissioners.

47-716. Applicable only to deposits in natural state.

47-717. Removal of commercial quantities without lease unlawful.

47-718. Violations — Remedies — Penalties.

**§ 47-701. Reservation of mineral deposits to state — Terms defined.**

— (1) The terms “mineral lands,” “mineral,” “mineral deposits,” “deposit,” and “mineral right,” as used in this chapter, and amendments thereto shall be construed to mean and include all coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character.

(2) Such deposits in lands belonging to the state are hereby reserved to the state and are reserved from sale except upon a rental and royalty basis and except when the surface estate is identified by the state board of land commissioners as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes. Except for the aforementioned purposes, the purchaser of all other state land shall acquire no right, title or interest in or to such deposits, and the right of such purchaser shall be subject to the reservation of all mineral deposits and to the conditions and limitations prescribed by law providing for the state and persons authorized by it to prospect for, mine, and remove such deposits and to occupy and use so much of the surface of said land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

(3) An exchange of state land consummated by the board under authority of [section 58-138, Idaho Code](#), shall not be considered a sale of state lands. The transfers of mineral deposits heretofore made in such exchanges are hereby approved.

**History.**

1923, ch. 96, § 1, p. 115; am. 1925, ch. 220, § 1, p. 404; I.C.A., § 46-701; am. 1981, ch. 325, § 1, p. 676; am. 1986, ch. 81, § 1, p. 239; am. 1992, ch. 226, § 1, p. 676; am. 2004, ch. 13, § 1, p. 10.

**STATUTORY NOTES**

**Cross References.**

Public lands, Title 58, Idaho Code.

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

## CASE NOTES

Construction.

Effect of amendments.

Mineral reservations taxable.

Reserved to state.

Suit for damage to claim.

### **Construction.**

Where the basis for a request for attorney fees was an action to quiet title in real property, the outcome of which depended on the interpretation of this section, and on whether sand, gravel and pumice were included in the minerals reserved by the state in that statute, the ruling that attorney fees were not awardable under the provision covering commercial transactions was affirmed. *Treasure Valley Concrete, Inc. v. State*, 132 Idaho 673, 978 P.2d 233 (1999), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

### **Effect of Amendments.**

A district court did not err in concluding that sand, gravel and pumice did not constitute “minerals” within the meaning of this section prior to its amendment in 1986. *Treasure Valley Concrete, Inc. v. State*, 132 Idaho 673, 978 P.2d 233 (1999), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

### **Mineral Reservations Taxable.**

Under statute defining personalty for tax purposes as “equities in state lands, easements, and reservations,” mineral reservations were assessable as personalty and not as realty, as against the contention that under ejusdem generis rule reservations in state lands only were intended to be classified as personalty, since the reservations in state lands were not taxable. *In re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664 (1936).

### **Reserved to State.**

Mineral rights of state lands, including school endowment lands, are reserved to the state. *Ehco Ranch, Inc. v. State ex rel. Evans*, 107 Idaho 808, 693 P.2d 454 (1984).

### **Suit for Damage to Claim.**

In suit brought by owners of a placer mining claim alleging defendant village, without their permission, seized property upon which the claim was located and was using the same as a dump ground rendering it useless as a mining claim, evidence supported the finding that the land upon which defendant was dumping trash was situated below the natural high water mark of the Salmon River and the Salmon River being a navigable stream, its bed below the natural high water mark was the property of the state of Idaho and damages could not be recovered. *Halmadge v. Riggins*, 78 Idaho 328, 303 P.2d 244 (1956).

**Cited** *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969); *Harris v. State Ex Rel. Kempthorne*, 147 Idaho 401, 210 P.3d 86 (2009).

## **RESEARCH REFERENCES**

**ALR.** — Grant, lease, exception, or reservation of “oil, gas, and other minerals,” or the like, as including coal or metallic areas. 59 A.L.R.3d 1146.

**§ 47-701A. Definition.** — As used in [section 47-701, Idaho Code](#), the term “salable minerals,” means a mineral substance that can be taken from the earth and that has a value in and of itself separate and apart from the earth and includes, but is not limited to, building stone, cinders, pumice, scoria, clay, diatomaceous earth, sand, gravel, quartz, limestone and marble.

**History.**

[I.C., § 47-701A](#), as added by 1986, ch. 81, § 2, p. 239.

**§ 47-702. Right of exploration and withdrawal.** — (1) All lands belonging to the state of Idaho in which the mineral deposits, excepting oil and gas and geothermal resources, are owned by the state, and which have not been located, leased, or withdrawn in accordance with the terms of this chapter, are hereby declared to be free and open to casual exploration.

(2) The board of land commissioners is authorized in its discretion to withdraw from entry and exploration specifically described tracts of state lands under its control and jurisdiction, or state lands under the control and jurisdiction of other state agencies. Within thirty (30) days of the decision for such withdrawal the board of land commissioners shall publish a notice in a newspaper of general circulation in the county or counties in which such lands are situated providing the legal description of the lands withdrawn. Concerned citizens shall have thirty (30) days from the date of publication to request an appeal of such withdrawal to the board of land commissioners.

**History.**

1923, ch. 96, § 2, p. 115; I.C.A., § 46-702; am. 1981, ch. 325, § 2, p. 676; am. 1986, ch. 131, § 1, p. 239.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-703. Exploration locations on state lands.** — (1) Location for exploration purposes may be made upon lands belonging to the state of Idaho in which the mineral rights are reserved or belong to the state, including the beds of all navigable rivers in the state of Idaho and all portions of said navigable rivers between the natural or ordinary high water marks, providing that no exploration location may be made on any lands for which a mineral lease application has been made and is pending as provided in [section 47-704, Idaho Code](#); providing further, that no exploration location may be made for salable minerals as that term is used in [section 47-701, Idaho Code](#).

(2) Such locations when made upon surveyed land shall conform to legal subdivisions. When made upon the beds of navigable rivers, they shall not exceed one-half ( $\frac{1}{2}$ ) river mile. When made on surveyed land, they shall not exceed twenty (20) acres except that when made upon surveyed land designated as a lot, they may equal one-half ( $\frac{1}{2}$ ) of said lot. Descriptions of locations made on the beds of navigable rivers, the boundaries of which shall have been meandered, shall be described as near as may be with the lotting of the fractional subdivisions bordering upon the navigable rivers, and the description of the location shall be so accurately drawn and tied to the government corners that the ground may be accurately located and so described that the location may be accurately platted upon the books of the state board of land commissioners.

(3) The discoverer of a mineral deposit or a person desiring to prospect for mineral shall immediately post conspicuously on each twenty (20) acre tract or fraction thereof, or each one-half ( $\frac{1}{2}$ ) river mile that he desires to locate, an exploration certificate of location declaring that he has made such discovery or declaring that he desires to prospect for mineral, together with the date of such discovery or declaration. Said certificate shall be in such form as the board may prescribe. The locator shall be allowed twenty (20) days from such date to file an exact copy of exploration certificate of location with the state board of land commissioners and pay the appropriate fees. Said certificate shall designate the legal subdivisions located and shall be recorded in the office of said board as of the date of filing, and an entry of such location shall be made upon the plat and tract books.

(4) The locator shall be entitled to hold said location for a period of two (2) years from the first of the month following the date of recording and by performing one hundred dollars (\$100) worth of work during each year for each location.

(5) Work within the meaning of this chapter shall consist of tunnels, shafts, or other mining excavations or development, including drilling by conventional methods and pits or shafts sunk to determine the value of the gravels. Work shall include roads, trails, buildings, machinery, or other surface improvement. All such work may be done at one (1) place on the location or at as many places as the locator may desire, and in case two (2) or more locations are under the same ownership, then said work may be performed on any one (1) or more locations. Work so performed as annual assessment, where performed for the benefit of a group contiguous and under common ownership, shall be such that it shall be of material benefit to each and every location forming the contiguous group.

(6) Written proof that such work has been done shall be filed with the state board of land commissioners on such forms and in such manner as it shall prescribe. Such procedure shall empower the locator to retain possession of and prospect said location for a period of two (2) years, at the end of which time he shall be required to take a lease upon such terms as may be agreed upon by the state board of land commissioners. Provided, that the right granted under this section to prospect for mineral and to make locations shall not extend to lands in the possession of a purchaser under contract of sale from the state.

### **History.**

1923, ch. 96, § 3, p. 115; am. 1925, ch. 220, § 2, p. 404; I.C.A., § 46-703; am. 1933, ch. 107, § 1, p. 169; am. 1937, ch. 124, § 1, p. 185; am. 1951, ch. 72, § 1, p. 112; am. 1981, ch. 325, § 3, p. 676; am. 1990, ch. 316, § 1, p. 861; am. 2020, ch. 341, § 1, p. 998.

## **STATUTORY NOTES**

### **Cross References.**

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)



## **Amendments.**

The 2020 amendment, by ch. 341, in subsection (5), substituted “this chapter” for “this section” near the beginning of the first sentence and deleted “not” following “Work shall” at the beginning of the second sentence.

## **Compiler’s Notes.**

Section 4 of S.L. 2020, ch. 341 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

## **Effective Dates.**

Section 5 of S.L. 2020, ch. 341 declared an emergency. Approved March 24, 2020.

## **CASE NOTES**

[Effect of failure to record location notice.](#)

[Work on claim.](#)

### **[Effect of Failure to Record Location Notice.](#)**

The failure to record a notice of location of a placer claim within the statutory time does not work a forfeiture or invalidate the location as between the parties thereto, even if the claims are on state land. [Brabazon v. Gordon, 65 Idaho 446, 145 P.2d 484 \(1944\).](#)

### **[Work on Claim.](#)**

The congress of the United States and the Idaho legislature have long recognized and permitted the practice of doing work upon one mining property for the benefit of other mining property as long as a minimum total is performed. [Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 \(1969\).](#)

**§ 47-703A. Exploration on state lands — Bond.** — (1) With the exception of casual exploration as defined in subsection (6)(a) of this section, prior to motorized exploration on state lands, an operator shall first submit to the director of the department of lands, an exploration and reclamation plan and a bond in such form as prescribed by the board. The bond shall be in an amount determined by the board to be the estimated reasonable costs to perform the reclamation activities described in the exploration and reclamation plan in the event of the failure of the operator to complete those activities, plus ten percent (10%) of such costs, and conditioned on the payment of all damages to the land and resources thereon caused by the motorized exploration. An operator shall also comply with the dredge and placer mining act [Idaho dredge and placer mining protection act], chapter 13, title 47, Idaho Code, and the surface mining act [Idaho mined land reclamation act], chapter 15, title 47, Idaho Code, where applicable. Written approval by the board is required prior to entry for motorized exploration.

(2) Except as provided in this subsection, no bond for exploration reclamation submitted pursuant to this chapter shall exceed two thousand five hundred dollars (\$2,500) for any given acre of affected land. The board may require a bond in excess of two thousand five hundred dollars (\$2,500) for any given acre of affected land only when the following conditions have been met:

- (a) The board has determined that such bond is necessary to meet the requirements of this chapter;
- (b) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary; and
- (c) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for hearing may be waived, in writing, by the operator. Any hearing that is held shall, at the discretion of the director, extend the time up to thirty (30) days in which the board must act on a submitted plan.

(3) Weather permitting, the board shall deliver to the operator within sixty (60) days after the receipt of any exploration and reclamation plan a notice of rejection or notice of approval of said plan, as the case may be; provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed approved under subsection (1) of this section, and the operator may, upon furnishing a bond to the board that meets the requirements of subsection (1) of this section, commence and conduct his motorized exploration on the lands covered by such plan as if a notice of approval of said plan had been received from the board; provided, however, that if weather conditions prevent the board from inspecting the lands to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection. Any notice of rejection issued by the director of the department of lands or his properly authorized designated officer may be appealed by the operator to the board.

(4) The operator shall reclaim the surface damaged by the motorized exploration to the approximate previous contour and condition insofar as is reasonably possible.

(5) When all reclamation activities described in the exploration and reclamation plan have been completed, the operator shall notify the board. Within thirty (30) days after the receipt of such notice, weather permitting, the board shall notify the operator as to whether or not the reclamation activities have been satisfactorily completed. Upon the determination by the board that the reclamation activities in question have been satisfactorily completed, the board shall release the bond. If weather conditions prevent the board from obtaining information needed to determine if the reclamation activities have been satisfactorily completed, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection. Any notice issued by the director of the department of lands or his properly authorized designated officer to not release the bond may be appealed by the operator to the board.

(6) The following definitions shall apply to this chapter:

(a) "Casual exploration" means entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual

exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two (2) inches or less shall be considered casual exploration when operated on endowment lands in a perennial stream. Exploration using suction dredges having an intake diameter of five (5) inches or less shall be considered casual exploration when operated in a navigable river. All suction dredging on state lands must follow the requirements of the stream protection act, chapter 38, title 42, Idaho Code.

(b) “Motorized exploration” means exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two (2) inches when operated on endowment land in a perennial stream, and sampling with suction dredges having an intake diameter greater than five (5) inches when operated in a navigable river. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of the intake size.

(c) “Exploration and reclamation plan” means, for this section only, a written plan and maps with sufficient detail to accurately describe all of the activities associated with motorized exploration on state lands and the activities associated with reclamation. Reclamation activities may include, but are not limited to, regrading to resemble the original contour, plugging drill holes and revegetation. An estimate of third party reclamation costs, acceptable to the board, shall be included in the plan and will be used to determine the bond amount.

### **History.**

**I.C., § 47-703A**, as added by 1981, ch. 325, § 4, p. 676; am. 1990, ch. 317, § 1, p. 865; am. 2014, ch. 57, § 1, p. 135.

## **STATUTORY NOTES**

### **Cross References.**

Director of department of lands, § 58-105.

**Amendments.**

The 2014 amendment, by ch. 57, rewrote the section, adding present subsections (2) and (5) and paragraph (6)(c).

**Compiler's Notes.**

The bracketed insertions near the end of subsection (1) were added by the compiler to correct the names of the referenced acts. See §§ 47-1322 and 47-1502.

**§ 47-704. Leases of mineral rights in state lands.** — (1) The state board of land commissioners may lease in tracts of sizes as the board may deem fair for prospecting, exploration, and mining of mineral deposits, except for leases for oil, gas and other hydrocarbons that may be contained in any portion of the unsold lands of the state or that may be contained in state lands sold with a reservation of mineral deposits or that belong to the state of Idaho by reason of being situate between the high water marks of navigable rivers of the state, for such annual rental, not less than one dollar (\$1.00) per acre per annum, and for such royalty upon the product as the board may deem fair and in the interest of the state, except in the case of state oil and gas leases wherein the royalty to the state shall be not less than twelve and one-half percent (12 ½%), and provided that the minimum royalty shall not be less than two and one-half percent (2 ½%) and not more than market conditions.

(2) All mineral leases, except leases for oil, gas, and other hydrocarbons, and geothermal resources of state school lands and for lands belonging to the state of Idaho, shall be for a term of up to twenty (20) years and shall be continued if any of the following provisions are met:

- (a) Precious metals, minerals, mineral concentrates, mineral products, or ores are produced in paying quantities;
- (b) The lessee has negotiated and remitted a prepaid royalty no less than five dollars (\$5.00) per acre per year;
- (c) The lessee in good faith conducts exploration, prospecting, work, or mining operations thereon;
- (d) The mineral lease is undergoing a regulatory approval process for exploration, prospecting, or mining; or
- (e) The lessee conducts work on land adjacent or near the leased premises as a single mining operation, including construction of infrastructure associated with mining.

(3) Provided, that the leaseholder of any mineral lease except leases for oil, gas, and other hydrocarbons, and geothermal resources heretofore or hereafter issued, upon the expiration of the initial lease and all renewals

thereof, shall be given the preferential right to renew such lease or renewal leases under such readjustment of the terms and conditions as the board may determine to be necessary in the interest of the state.

(4) All applications received, whether by mail or by personal delivery over the counter, shall be immediately stamped with the date and hour of filing. Simultaneous filings result when two (2) or more applications are received for the same lands during the same hour of the same day. Simultaneous filings shall be resolved by competitive bidding. This provision does not apply to applications received from an applicant having a preferential right under this section. In the absence of a simultaneous filing, and except for lands and resources which may be designated for competitive bidding, right of priority to a mineral lease shall be determined by the first qualified applicant who shall file a completed, signed application on the form of the department of lands or exact copy thereof between the hours of 8:00 a.m. and 5:00 p.m. during any business day, together with the application fee set by the board.

(5) Applications for mineral leases shall be made under oath in such form as the board may prescribe, and the applicant shall describe the land, specify the particular mineral or minerals, and give such additional information as may be required by the rules and regulations of the board. If the applicant for a lease has previously filed a certificate of location, as provided in [section 47-703, Idaho Code](#), upon any part of the land desired to be leased, such application shall be given a preferential right to the land covered by his location; that no lands upon which a mineral location has been duly made and recorded as provided in [section 47-703, Idaho Code](#), shall be leased for mining purposes during the two (2) year periods to any applicant except the person having made such location; provided, however, that no locations may be made for oil and gas deposits or lands, or geothermal resources.

(6) Any motorized exploration as defined in [section 47-703, Idaho Code](#), on the lands between the ordinary high water marks of any navigable river of the state shall be prohibited except upon written approval by the board and submission of a bond to the department in the form and amount set by the board; and, if applicable, an operator shall also comply with the [Idaho] dredge and placer mining [protection] act, chapter 13, title 47, Idaho Code;

provided, that in all instances an operator shall comply with the stream protection act and all other applicable laws and rules of the state.

(7) Upon receipt by the state board of land commissioners of an application to lease any lands which may belong to the state of Idaho by reason of being situate between the high water marks of navigable rivers of the state, the board shall cause, at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. The board or its authorized representative shall hold a public hearing on the application, if requested in writing, no later than thirty (30) days after the last published notice by ten (10) persons whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the board may order a public hearing in the first instance. The board shall consider fully all written and oral submissions respecting the application.

(8) Provided, however, that the state board of land commissioners shall send notice of any such application for leasing the bed of navigable rivers to the director of the department of water resources, who, if the director thinks advisable, shall at the expense of the applicant make an investigation. If said investigation shows that the rights of interested parties may be jeopardized by the issuance of the proposed lease, the director shall give notice of such applications to parties affected thereby. If it shall appear to the state board of land commissioners that the leasing of any lands between the high water marks of any navigable river will be injurious to the rights of any person or persons having the right to the use of the waters thereof, for irrigation, power, or any other lawful purpose, the state board of land commissioners shall deny such application.

(9) Mineral leases granted according to this section, including but not limited to leases that have been awarded but not executed, shall comply with the following terms and conditions:

(a) After granting of a lease, no fees or payments shall be charged to lessees except for royalty payments, including prepaid and production, and rent per acre per annum.



(b) Rent per acre per annum may be indexed for inflation, but no more than three percent (3%) per annum. The rental paid shall be deducted from the royalties as they accrue for the life of the lease.

(c) No more than one (1) lease may be issued for the same mineral on the same land.

(d) Only one (1) lessee may hold multiple mineral leases on the same land.

(e) In the event of an exchange or sale involving leased lands, the purchaser shall accept and be assigned to perform the exact terms and conditions set forth in the lease as the lessor.

(f) The leaseholder demonstrates a mineral resource is present on the public lands using industry standard to estimate or project a mineral resource that is likely viable for future mineral development. The board shall recognize its role as a partner on behalf of state lands and provide confidentiality to the leaseholders regarding resource estimates that may be reported. If the leaseholder determines in the future to drop any mineral lease, the board may use this information for public consumption to encourage and support mineral development on those leases.

(g) No less than one hundred eighty (180) days prior to the expiration date of the mineral lease, lease terms and conditions shall be fairly modified and readjusted if needed. If an agreement cannot be reached, the lessor and lessee shall engage in good faith mediation. The lease shall remain in full force and effect during the mediation.

### **History.**

1923, ch. 96, § 6, p. 115; am. 1925, ch. 220, § 3, p. 404; I.C.A., § 46-706; am. 1937, ch. 124, § 2, p. 185; am. 1939, ch. 99, § 1, p. 166; am. 1949, ch. 77, § 1, p. 135; am. 1951, ch. 43, § 1, p. 52; am. 1957, ch. 201, § 1, p. 416; am. 1957, ch. 210, § 1, p. 439; am. 1967, ch. 225, § 1, p. 676; am. 1980, ch. 31, § 1, p. 54; am. 1981, ch. 325, § 5, p. 676; am. 1986, ch. 81, § 3, p. 239; am. 1990, ch. 316, § 2, p. 861; am. 1990, ch. 317, § 2, p. 865; am. 2020, ch. 341, § 2, p. 998.

### **STATUTORY NOTES**

## **Cross References.**

Department of lands, § 58-101 et seq.

Director of department of water resources, § 42-1801.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

Stream protection act, § 42-3801 et seq.

## **Amendments.**

This section was amended by two 1990 acts which appear to be compatible and have been compiled together.

The 1990 amendment, by ch. 316, § 2, in subsection (1) in the first sentence substituted “one dollar (\$1.00)” for “twenty-five cents (25¢)”; in subsection (4) in the second sentence substituted “result when two (2) or more applications are received for the same lands during the same hour of the same day” for “will be resolved by a drawing within thirty (30) days thereafter” and added the present third and fourth sentences; in subsection (5) in the first sentence deleted “indicate the annual rental and royalty offered by him” following “describe the land,”; and in subsection (8) in the first and second sentences substituted “the director” for “he” following “who, if” and “proposed lease,” respectively.

The 1990 amendment, by ch. 317, § 2, in subsection (6) added “motorized” following “Any”, deleted “with heavy motorized equipment” following “exploration”, substituted “water marks” for “watermarks” preceding “of any navigable”, substituted “upon written approval” for “after award of a lease” following “prohibited except” and substituted “protection” for “channel alteration” following “with the stream”.

The 2020 amendment, by ch. 341, in subsection (1), in the first sentence, substituted “tracts of sizes as the board may deem fair for prospecting, exploration, and mining of mineral deposits” for “tracts not exceeding six hundred forty (640) acres for prospecting and mining purposes, and mineral deposits” near the beginning, added “and not more than market conditions” at the end, and deleted the former last sentence, which read: “The rental period for any year shall be deducted from the royalties as they accrue for that year”; rewrote subsection (2), which formerly read: “All mineral leases,

except leases for oil, gas, and other hydrocarbons, and geothermal resources of state school lands and for lands belonging to the state of Idaho, other than school lands, shall be for a term of ten (10) years, and so long thereafter as precious metals, minerals, salable minerals, and ores, or any of them, are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct mining operations thereon, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, development of, production, refining, processing and marketing of said precious metals, minerals, salable minerals, and ores produced from said lands, including the right to construct and maintain thereon all works, buildings, plants, waterways, roads, communication lines, reservoirs, tanks or other structures necessary to the full enjoyment thereon for the purpose of the lease”; in subsection (4), deleted “subsection (5) of” preceding “this section” at the end of the fourth sentence; and added subsection (9).

### **Federal References.**

For federal law on mineral leases on school lands, see [43 U.S.C.S. §§ 870 and 871](#).

### **Compiler’s Notes.**

The bracketed insertions in subsection (6) were added by the compiler to correct the name of the referenced act. These terms were missing from this section prior to the 2020 amendment. The terms do appear in S.L. 2020, ch. 341, § 2, but they were not engrossed as approved and intentional changes to the section. See § 47-1322.

Section 4 of S.L. 2020, ch. 341 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 5 of S.L. 2020, ch. 341 declared an emergency. Approved March 24, 2020.

## CASE NOTES

Discretion of board.

Effect of procedural defects.

Lease on offer by board.

Renewal of lease.

### **Discretion of Board.**

The state board of land commissioners is required to use considerable judgment in the granting of mineral leases; thus a writ of mandate would not be available to compel them to issue a lease in the absence of conduct that is arbitrary, capricious or discriminatory. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

### **Effect of Procedural Defects.**

There is authority that a defect in the procedure by which public lands are leased will not justify cancellation of a prior issued lease when there has been no application of a third party between the time the defect occurred and the time the lease issued. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

### **Lease on Offer by Board.**

Requirement that application under oath be made for lease was not applicable where lessee made no such application but received and accepted offer of lease from the land board; and lease created in this manner was not void. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

### **Renewal of Lease.**

Where respondent was offered leases in 1958 by land board and accepted same, such leases were not renewals of previous leases on same properties by same parties made pursuant to this section in 1948 and renewed in 1953, since provision of this section as it was in 1948, specifying only one renewal, became a part of 1948 leases and foreclosed any renewals beyond the one provided for. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

## RESEARCH REFERENCES

**Idaho Law Review.** — Common Law Aspects of Shale Oil and Gas Development, Christopher S. Kulander. 49 Idaho L. Rev. 367 (2013).

**§ 47-705. Appraisal of improvements — Term construed.** — Should any one apply to lease for prospecting and mining purposes the mineral deposits belonging to the state upon which improvements have been made, before the lease shall issue, to other than the owner of the improvements thereon, the applicant shall pay to the owner thereof the value of said improvements and shall file in the office of the state board of land commissioners a receipt showing that the price of said improvements, as agreed upon by the parties or fixed by appraisalment under authority of the said board, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of said improvements so agreed upon or fixed by appraisalment. The word “improvements” within the meaning of this section and of section 47-706[, Idaho Code,] shall be construed to mean work performed in the development of the property, the estimated value of all known or probable mineral contained in the land that has been discovered or developed through mining excavations made by lessee, and all buildings, dwellings, mill machinery, mine machinery, trails, roads, and all equipment used, constructed and necessary for the operation of the mine, mill or plant.

**History.**

1923, ch. 96, § 7, p. 115; am. 1925, ch. 220, § 4, p. 404; I.C.A., § 46-707.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed insertion near the beginning of the last sentence was added by the compiler to conform to the statutory citation style.

**§ 47-706. Forfeiture of improvements.** — If any mineral lease has been cancelled for a period of one (1) year and a new lease has not issued the improvements upon the property shall revert to and become the property of the state.

**History.**

1923, ch. 96, § 8, p. 115; I.C.A., § 46-708.

**§ 47-707. Forfeiture of leases.** — All leases of mineral deposits shall be conditional upon payment of the rental in advance annually, and upon the payment of the royalty provided for in the lease and upon the violation of any of the conditions of the lease, the board may at its option, after thirty (30) days' notice by registered mail, cancel the lease. Upon failure or refusal of the lessee to accept the readjustment of terms and conditions determined by the board at the end of any lease period, such failure or refusal shall work a forfeiture of the preferential right of the lessee. A forfeiture of such lease, and all rights of the lessee thereunder, may be declared by the state board of land commissioners for a violation of any of the terms or conditions of said lease or of any rule or regulation of said board with respect thereto or of any of the provisions of this chapter.

**History.**

1923, ch. 96, § 9, p. 115; am. 1925, ch. 220, § 5, p. 404; I.C.A., § 46-709; am. 1967, ch. 225, § 2, p. 676; am. 2020, ch. 341, § 3, p. 998.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Amendments.**

The 2020 amendment, by ch. 341, deleted “and such other provisions as may be provided by the board” following “provided for in the lease” near the middle of the first sentence.

**Compiler’s Notes.**

Section 4 of S.L. 2020, ch. 341 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”



**Effective Dates.**

Section 5 of S.L. 2020, ch. 341 declared an emergency. Approved March 24, 2020.

**CASE NOTES**

**Cited** [Hutchins v. Trombley, 95 Idaho 360, 509 P.2d 579 \(1973\).](#)

**§ 47-708. Rights and liabilities of lessees.** — A lessee of valuable mineral deposits shall have the right at all times to enter upon the lands described in his lease for prospecting and mining, provided he shall not injure, damage, or destroy the improvements of the surface owner; and the lessee shall be liable to and shall compensate such owner for all damages to the surface of said land and improvements thereon.

Any such lessee may occupy so much of the surface of said land as may be required for all purposes reasonably incident to the mining and removal of the mineral deposits: first, upon securing the written consent or waiver of the surface owner; or, second, upon payment of the damages to the surface of said land and improvements thereon to the owner thereof where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond, or undertaking, to the state of Idaho, for the use and benefit of the owner of the land to secure the payment of such damages, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in the form prescribed by and in accordance with the rules and regulations of the board and to be filed with and approved by the board.

Lessees of mineral lands shall fully protect the rights of all agricultural and grazing leases which have been heretofore, or may be hereafter granted, by erecting and keeping closed gates in all fences which may be opened, and inclosing or keeping covered all shafts, holes or open cuts.

**History.**

1923, ch. 96, § 10, p. 115; am. 1925, ch. 220, § 6, p. 404; I.C.A., § 46-710.

**§ 47-709. Mines operated under lease — Inspection by board.** — The state board of land commissioners shall cause inspection to be made by a competent person or persons of all mines or works operated under leases for the production of minerals as often as the board shall deem necessary in the interest of the state, and the board shall have the right at all times to inspect said mines or works.

**History.**

1923, ch. 96, § 11, p. 115; I.C.A., § 46-711.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-710. Forms, rentals, royalties, and fees.** — The board shall by rules and regulations prescribe the form of application, the form of lease, the amount of filing and recording fees, the annual rental, the amount of royalty, the basis upon which the royalty shall be computed, and such other details as it may deem necessary in the interest of the state, except as otherwise provided in this chapter.

**History.**

1923, ch. 96, § 12, p. 115; I.C.A., § 46-712.

**§ 47-711. Sale of state lands containing mineral deposits.** — (1) Lands in which minerals are contained and the surface of which has a value for other purposes may be sold as a single estate under the provisions of chapter 3, title 58, Idaho Code, relating to the sale of state lands, when the state land is identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes.

(2) For lands in which the surface estate previously has been sold with a reservation of the mineral estate, for which there is no lease of such mineral estate to any person other than the owner of the surface estate, and for which the potential highest and best use is for development purposes such as residential, commercial or industrial purposes, the mineral estate may be sold for its appraised value under the provisions of chapter 3, title 58, Idaho Code. The purchaser of a mineral estate who is not the owner of the surface estate shall have the same rights and liabilities with regard to the surface estate as identified in [section 47-708, Idaho Code](#).

(3) In the sale of the surface estate of all other state land, there shall be reserved to the state all mineral deposits and the right of the purchaser shall be subject to the conditions and limitations prescribed by law providing for the state or persons authorized by it to prospect for, mine and remove such deposits and to occupy and use so much of the surface of such land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

### **History.**

1923, ch. 96, § 13, p. 115; I.C.A., § 46-713; am. 2004, ch. 13, § 2, p. 10; am. 2004, ch. 271, § 1, p. 757.

## **CASE NOTES**

### **Mineral Reservations Taxable.**

Under statute defining personalty for tax purposes as “equities in state lands, easements, and reservations,” mineral reservations were assessable as personalty and not as realty, as against the contention that under ejusdem

generis rule reservations in state lands only were intended to be classified as personalty, since the reservations in state lands were not taxable. **In re Winton Lumber Co., 57 Idaho 131, 63 P.2d 664 (1936).**

**§ 47-712. Applications to purchase — Certificates of purchase.** — All applications to purchase those state lands that have not been identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes approved subsequent to the passage of this chapter shall be subject to a reservation to the state of all mineral deposits in said land. The state or persons authorized by it to prospect for, mine and remove the same as provided by law; and certificates of purchase issued by the state shall contain such reservation.

**History.**

1923, ch. 96, § 14, p. 115; am. 1925, ch. 220, § 7, p. 404; I.C.A., § 46-714; am. 2004, ch. 13, § 3, p. 10.

**§ 47-713. Effect of partial invalidity of chapter.** — If any clause, sentence, paragraph, or part of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**History.**

1923, ch. 96, § 16, p. 115; I.C.A., § 46-715.



**§ 47-714. Leases of navigable river beds authorized.** — The board of land commissioners of the state of Idaho is hereby specifically authorized to lease for mining purposes the beds of navigable rivers of the state of Idaho between the high water marks thereof, said leases to be given under the terms and provisions of this chapter and the rules and regulations heretofore or hereafter adopted by said board.

**History.**

I.C.A., § 46-718, as added by 1937, ch. 124, § 3, p. 185.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-715. Collection of royalties by board of land commissioners. —**  
The board of land commissioners of the state of Idaho is hereby authorized to collect royalties and other payments to the state of Idaho under mineral leases provided for by this chapter.

**History.**

I.C.A., § 46-719, as added by 1937, ch. 124, § 4, p. 185.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-716. Applicable only to deposits in natural state.** — The provisions of this chapter authorizing the leasing of the beds of the navigable rivers in the state of Idaho shall apply only to deposits in their natural state and shall not apply to dumps and tailings.

**History.**

I.C.A., § 46-720, as added by 1937, ch. 124, § 5, p. 185.

**§ 47-717. Removal of commercial quantities without lease unlawful.**

— It shall be unlawful for any person, association, firm or corporation to remove in commercial quantities any ores, minerals, or deposits from state lands before securing a lease for said lands from the state board of land commissioners. Any person, association, firm or corporation who so removes ores, minerals or deposits shall be liable to the state for treble damages in a civil action.

**History.**

I.C.A., § 46-721, as added by 1937, ch. 124, § 6, p. 185; am. 1989, ch. 262, § 1, p. 639.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Effective Dates.**

Section 7 of S.L. 1937, ch. 124 declared an emergency. Approved Mar. 15, 1937.

**§ 47-718. Violations — Remedies — Penalties.** — (1) In addition to any other penalties and remedies of this chapter and at law, any person, firm, or corporation who violates any provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed thereby, or who violates any determination or order thereunder or any violation of a lease granted under this chapter, the director of the department of lands may:

(a) Proceed by legal action in the name of the state of Idaho to enjoin the violation, by temporary restraining order, preliminary injunction and/or permanent injunction.

(i) The court, or a judge thereof at chambers, if satisfied from a verified complaint or by affidavit that the alleged violation has been or is being committed, may issue a temporary restraining order, without notice or bond, enjoining the defendant, his agents, employees, contractors and assigns from further violation, or from conducting exploration or mining on the state lands affected by the violation.

(ii) The verified complaint or affidavit that the alleged violation has been or is being committed shall constitute prima facie evidence of great or irreparable injury and/or great waste sufficient to support the temporary restraining order.

(iii) The action shall thereafter proceed as in other cases for injunctions. If at the trial the violation is established, the court shall enter a decree perpetually enjoining said defendant, his agents, employees, contractors and assigns from thereafter committing said or similar violations.

(b) Proceed by legal action in the name of the state of Idaho to obtain an order requiring the operator to promptly repair the damage and reclaim the state lands in accordance with the requirements of [section 47-703A, Idaho Code](#), and rules adopted pursuant thereto. If thereafter the court finds that the operator is not promptly complying with such order, the court shall order the operator to immediately pay an amount determined by the department to be the anticipated cost of reasonable repair and

reclamation in accordance with [section 47-703A\(4\), Idaho Code](#), and rules adopted pursuant thereto.

(c) Proceed to forfeit the operator's bond required by section 47-703A(1), 47-704(6) or 47-708, Idaho Code. The board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which includes a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the lessee, an officer of a corporate lessee, or the designated agent of the lessee shall constitute service. The lessee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the lessee fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the lessee, and the board may proceed to forfeit the bond in the amount necessary to reclaim affected lands and pay for any outstanding royalties and related administrative costs. The director of the department of lands is empowered to issue subpoenas. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall enter an order in accordance with chapter 52, title 67, Idaho Code. Appeal to a district court shall be in accordance with chapter 52, title 67, Idaho Code.

(d) Cancel the lease in accordance with [section 47-707, Idaho Code](#).

(2) In addition to the injunctive remedies of subsection (1)(a) of this section:

(a) Proceed in the first instance by legal action in the name of the state of Idaho to recover from an operator who without bond has conducted or is conducting exploration with heavy equipment on state lands, including lands between the ordinary high watermarks of navigable rivers, the cost of repairing damage to and reclaiming the affected state lands in accordance with [section 47-703A\(4\), Idaho Code](#), and rules adopted pursuant thereto; or if the bond on file with the department of lands is not sufficient to adequately reclaim the affected state lands, to recover the cost in excess of the bond to reclaim the affected state lands in

accordance with [section 47-703A\(4\), Idaho Code](#), and rules adopted pursuant thereto.

(b) Proceed by legal action in the name of the state of Idaho to recover from an operator who has removed minerals in commercial quantities from state lands, including lands between the ordinary high watermarks of navigable rivers, in violation of the provisions of [section 47-717, Idaho Code](#), damages in the amount of the prevailing royalty rate set by the board of land commissioners for the particular mineral removed plus interest from the date of removal at the legal rate of interest due on money judgments set by the Idaho state treasurer pursuant to [section 28-22-104, Idaho Code](#), from the date of removal to judgment.

(3) In addition to any other penalties or injunctive remedies of this chapter, any person, firm, or corporation who violates any of the provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which any provision of this chapter, rule or order has been or is being violated. All sums recovered shall be credited to the general fund.

(4) An appeal from a final judgment of the district court shall be taken in the manner provided by law for appeals in civil cases.

### **History.**

[I.C., § 47-718](#), as added by 1981, ch. 325, § 6, p. 676; am. 1989, ch. 262, § 2, p. 639; am. 1993, ch. 216, § 43, p. 587; am. 2012, ch. 196, § 1, p. 527; am. 2014, ch. 57, § 2, p. 135.

## **STATUTORY NOTES**

### **Cross References.**

Director of department of lands, § 58-105.

General fund, § 67-1205.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2012 amendment, by ch. 196, substituted “the legal rate of interest due on money judgments set by the Idaho state treasurer pursuant to [section 28-22-104, Idaho Code](#)” for “the average annual interest rate of the investment board” near the end of paragraph (2)(b).

The 2014 amendment, by ch. 57, updated references in paragraphs (1)(b) and (2)(a) in light of the 2014 amendment of § 47-703A.

**Effective Dates.**

Section 7 of S.L. 1981, ch. 325 declared an emergency. Approved April 7, 1981.





## Chapter 8

### OIL AND GAS LEASES ON STATE AND SCHOOL LANDS

Sec.

47-801. Lease of state or school lands for oil and gas development — Surface rights.

47-802. Rules and regulations governing leases and mining operations.

47-803. Conditions for drilling operations — Extension of time. [Repealed.]

47-804. Limitation on area covered by lease — Right to hold more than one lease.

47-805. Annual rental — Amount — Minimum royalty.

47-806. Lease of lands for grazing or agricultural purposes — Rights of lessee under oil or gas lease.

47-807. Assignment or transfer of leases restricted.

47-808. Bond.

47-809. Cancellation of oil and gas leases for noncompliance with conditions — Procedure — Termination of lease by lessee.

47-810. Grants executed in accordance with constitution.

47-811. Cooperative development of oil and gas lands.

47-812. Application of section 47-707 limited.

**§ 47-801. Lease of state or school lands for oil and gas development — Surface rights.** — The state board of land commissioners is hereby authorized and empowered to lease for a term of up to ten (10) years, and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or other hydrocarbons, or any of them, is produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct drilling operations thereon, any state or school lands that may contain oil, gas, casinghead gas, casinghead gasoline, or other hydrocarbons, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, drilling for, production, refining and marketing of said oil, gas, casinghead gas, casinghead gasoline or other hydrocarbons produced from said lands, including the right to construct and maintain thereon all works, buildings, plants, waterways, roads, communication lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof for the purposes of the lease.

**History.**

1937, ch. 130, § 1, p. 200; am. 1949, ch. 128, § 1, p. 226; am. 2017, ch. 119, § 1, p. 272.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Amendments.**

The 2017 amendment, by ch. 119, substituted “term of up to ten (10) years” for “term of ten (10) years” near the beginning of the section.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Common Law Aspects of Shale Oil and Gas Development, Christopher S. Kulander. 49 Idaho L. Rev. 367 (2013).

**§ 47-802. Rules and regulations governing leases and mining operations.** — State board of land commissioners is hereby authorized and empowered to make and establish rules and regulations governing the issuance of oil and gas leases under the provisions of this act and covering the conduct of development and mining operations to be carried on thereunder.

**History.**

1937, ch. 130, § 2, p. 200.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1937, Chapter 130, which is compiled as §§ 47-801, 47-802, and 47-804 to 47-810. The reference probably should be to “this chapter,” being chapter 8, title 47, Idaho Code.

**§ 47-803. Conditions for drilling operations — Extension of time.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1937, ch. 130, § 3, was repealed by S.L. 1949, ch. 128, § 2.

**§ 47-804. Limitation on area covered by lease — Right to hold more than one lease.** — No single oil and gas lease given and granted under the provisions of this act shall be for an area exceeding one (1) section, provided that one (1) person, firm or corporation may hold more than one lease.

**History.**

1937, ch. 130, § 4, p. 200; am. 1949, ch. 128, § 3, p. 226.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1937, Chapter 130, which is compiled as §§ 47-801, 47-802, and 47-804 to 47-810. The reference probably should be to “this chapter,” being chapter 8, title 47, Idaho Code.

**§ 47-805. Annual rental — Amount — Minimum royalty.** — Oil and gas leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance, and royalty on oil and gas lands shall not be less than twelve and one-half per cent (12 ½%) of oil and/or gas produced and saved from said lands under said lease. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners.

**History.**

1937, ch. 130, § 5, p. 200; am. 1949, ch. 128, § 4, p. 226; am. 1974, ch. 106, § 1, p. 1246; am. 1985, ch. 125, § 1, p. 309.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-806. Lease of lands for grazing or agricultural purposes — Rights of lessee under oil or gas lease.** — The state board of land commissioners shall have the right to lease state or school lands for grazing or agriculture purposes, as otherwise provided, and to issue oil and gas leases covering lands leased for grazing or agricultural purposes, provided, however, that the lessee under any oil and gas lease issued under the provisions of this act shall have paramount right to the use of so much of the surface of the land as shall be necessary for the purposes of his lease and shall have the right of ingress and egress at all times during the term of said lease.

**History.**

1937, ch. 130, § 6, p. 200.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Compiler's Notes.**

The term “this act” refers to S.L. 1937, Chapter 130, which is compiled as §§ 47-801, 47-802, and 47-804 to 47-810. The reference probably should be to “this chapter,” being chapter 8, title 47, Idaho Code.



**§ 47-807. Assignment or transfer of leases restricted.** — No oil and gas lease made under the provisions of this act shall be assignable or transferable except upon the written consent of the board.

**History.**

1937, ch. 130, § 7, p. 200.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1937, Chapter 130, which is compiled as §§ 47-801, 47-802, and 47-804 to 47-810. The reference probably should be to “this chapter,” being chapter 8, title 47, Idaho Code.

**§ 47-808. Bond.** — (1) The board shall require the execution of a good and sufficient bond in an amount the board determines reasonable which shall not be less than one thousand dollars (\$1,000) in favor of the state of Idaho conditioned on the payment of all damages to the surface and improvements thereon, whether or not the lands have been sold or leased for any other purposes.

(2) Upon commencement of operations for the drilling of any well, lessee shall be required by the board to furnish such a bond the board determines reasonable which shall not be less than six thousand dollars (\$6,000) which bond shall be in lieu of the bond required in subsection (1) of this section and shall cover all subsequent operations on said lease.

**History.**

1937, ch. 130, § 8, p. 200; am. 1949, ch. 128, § 5, p. 226; am. 1992, ch. 160, § 1, p. 516.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-809. Cancellation of oil and gas leases for noncompliance with conditions — Procedure — Termination of lease by lessee.** — (a) The state board of land commissioners shall reserve and may exercise the authority to cancel any oil and gas lease upon failure by the lessee to exercise due diligence and care in the prosecution of his operations in accordance with the terms and conditions stated in said lease and with all laws of the state of Idaho, and shall insert in every such lease appropriate provisions for its cancellation by the board in the event of noncompliance upon the part of the lessee; provided, however, that except in the instance of nonpayment of rentals or royalties, no such lease shall be cancelled by the board other than for a substantial violation of the terms thereof and unless it shall notify the lessee in writing of the existence and exact nature of the cause of cancellation and unless the lessee thereafter, and within ninety (90) days from the mailing of such notice by registered mail, shall fail to remedy such cause for cancellation; and provided further that no default by the lessee in the performance of any of the conditions or provisions of such lease as to any well or wells on any legal subdivision of the land covered by such lease shall affect the right of the lessee to continue the lessee's possession or operation of any other well or wells, situated upon any other legal subdivision of said land. The term "legal subdivision" as herein used shall mean a subdivision as established by the United States Land Survey which most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, said term "legal subdivision" shall mean the parcel upon which such well shall be located, but in any event not less than forty (40) acres surrounding such well.

(b) The lessee of any such oil and gas lease may surrender and terminate the lease as to all or any part of the lands covered by the same upon payment of the rentals then accrued and upon giving notice in writing, not less than thirty (30) days prior to such surrender or termination, to the state board of land commissioners and thereupon lessee shall be relieved from liability for rental and all other obligations as to the acreage so surrendered; provided, however, that such surrender shall not thereby relieve the lessee of any liabilities which may have accrued in connection with the lease prior

to the surrender of such acreage. In the event of a partial surrender of the lands covered by such lease, the annual rental thereafter payable shall be reduced proportionately.

**History.**

1937, ch. 130, § 9, p. 200; am. 1949, ch. 128, § 6, p. 226.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Compiler's Notes.**

For further information on the public land survey system, see *<https://www.blm.gov/programs/lands-and-realty/cadastral-survey/cadastral-tools>*.

**§ 47-810. Grants executed in accordance with constitution.** — All grants and permissions under this act shall be executed as required by the Constitution of the State of Idaho, Article IV, Section 16.

**History.**

1937, ch. 130, § 10, p. 200.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1937, Chapter 130, which is compiled as §§ 47-801, 47-802, and 47-804 to 47-810. The reference probably should be to “this chapter,” being chapter 8, title 47, Idaho Code.

**§ 47-811. Cooperative development of oil and gas lands.** — The state board of land commissioners is authorized to join on behalf of the state of Idaho in cooperative or unit plans of development or operation on oil and gas pools with the United States government and its lessees or permittees and with others in such form as may be acceptable to it to modify or amend the same from time to time as in its judgment it may deem advisable, to consent to and approve the designated participating area and any extension or contraction thereof and to do all acts and things which it considers necessary or advisable to make operative such unit plan or plans; and for such purposes the board is hereby authorized with the consent of its lessees to modify and change any and all terms of leases issued by it to facilitate the efficient and economical production of oil or gas from the lands under its jurisdiction; provided, however, that said board shall not use or contract to use funds under its control for the purpose of drilling or otherwise paying the cost of development of oil and gas.

**History.**

1949, ch. 128, § 7, p. 226.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**§ 47-812. Application of section 47-707 limited.** — Section 47-707[, Idaho Code,] shall not be construed to apply to oil and gas leases issued under the authority of section 47-801[, Idaho Code].

**History.**

1949, ch. 128, § 8, p. 226.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions near the beginning and at the end of this section were added by the compiler to conform to the statutory citation style.





## Chapter 9

# RIGHTS OF WAY AND EASEMENTS FOR DEVELOPMENT OF MINES

Sec.

47-901. Right of way for mining purposes.

47-902. Right of way for mining purposes — Railroads, ditches, and tunnels.

47-903. Action to condemn right of way.

47-904. Issuance and service of summons.

47-905. Appointment of commissioners — Trial by court if commissioners not appointed.

47-906. Oath, view, and report of commissioners.

47-907. Setting aside report.

47-908. Rights upon payment of damages.

47-909. Appeal from commissioners' award — Bond.

47-910. Trial on appeal.

47-911. Effect of appeal — Bond and deposit of damages.

47-912. Costs of appeal.

47-913. Costs of proceedings.

**§ 47-901. Right of way for mining purposes.** — The owner, locator or occupant of a mining claim, whether patented under the laws of the United States or held by location or possession, may have and acquire a right of way for ingress and egress, when necessary in working such mining claim, over and across the lands or mining claims of others, whether patented or otherwise.

**History.**

1876, p. 70, § 1; R.S., § 3130; reen. R.C. & C.L., § 3223; C.S., § 5537; I.C.A., § 46-801.

**CASE NOTES**

Purpose for which taken.

Validity.

**Purpose for Which Taken.**

Fact that land sought to be condemned was held as a mining claim for prospective public use did not protect it from being condemned for public use. *Marsh Mining Co. v. Inland Empire Mining & Milling Co.*, 30 Idaho 1, 165 P. 1128 (1916).

**Validity.**

State, under delegation of power in 30 U.S.C.S. § 43, was authorized to enact this chapter. *Baillie v. Larson*, 138 F. 177 (C.C.D. Idaho 1905).

**Cited** *Marsh Mining Co. v. Inland Empire Mining & Milling Co.*, 30 Idaho 1, 165 P. 1128 (1916).

**§ 47-902. Right of way for mining purposes — Railroads, ditches, and tunnels.** — When any mine or mining claim is so situated, that for the more convenient enjoyment of the same a road, railroad or tramway therefrom, or ditch or canal to convey water thereto, or a ditch, flume, cut or tunnel to drain or convey the waters or tailings therefrom, or a tunnel or shaft, may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, may require the use or occupancy of lands or mining grounds, owned, occupied or possessed by others than the person or persons or body corporate, requiring an easement for any of the purposes described, the owner, claimant or occupant of the mine or mining claim first above mentioned, is entitled to a right of way, entry and possession for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, in, upon, through and across such other lands or mining claims, upon compliance with the provisions of this chapter.

**History.**

1876, p. 70, § 2; am. 1880, p. 266, § 1; R.S., § 3131; reen. R.C. & C.L., § 3224; C.S., § 5538; I.C.A., § 46-802.

**CASE NOTES**

**Cited** Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916).

**§ 47-903. Action to condemn right of way.** — When the owner, claimant or occupant of any mine or mining claim desires to work the same, and it is necessary, to enable him to do so successfully and conveniently, that he have a right of way for any of the purposes mentioned in the foregoing sections, if such right of way cannot be acquired by agreement with the claimant or owner of the lands or claims over, under, through, across or upon which he seeks to acquire such right of way, he may commence an action in the district court in and for the county in which such right of way, or some part thereof, is situated, by filing a verified complaint containing a particular description of the character and extent of the right sought, a description of the mine or claim of the plaintiff, and of the mine or claim and lands to be affected by such right of way or privilege, with the name of the occupant or owner thereof. He may also set forth any tender of compensation that he may have made, and demand the relief sought.

### **History.**

1876, p. 70, § 3; R.S., § 3132; am. 1899, p. 350, § 1; reen. R.C. & C.L., § 3225; C.S., § 5539; I.C.A., § 46-803.

## **CASE NOTES**

Condemnation denied.

Construction.

### **Condemnation Denied.**

With respect to an action by mine claim owners against neighbors seeking condemnation of a right of way across their properties, the owners were not entitled to condemnation because: (1) they could not get access to the portion of the roads in question on the neighbors' properties without first getting access across the property of other neighbors; and (2) the owner's claims against the other neighbors had failed. *Andrus v. Nicholson*, 145 Idaho 774, 186 P.3d 630 (2008).

Construction.

Mine claim owners' action against neighbors seeking condemnation of a right of way across their properties was barred by res judicata because, in a previous action between the same parties, the owners had sought the same result by asserting a statutory right to the use of roads across the neighbors' properties. *Andrus v. Nicholson*, 145 Idaho 774, 186 P.3d 630 (2008).

**§ 47-904. Issuance and service of summons.** — Upon the filing of such complaint the clerk must issue a summons as provided in other civil actions, and the same must be served in the manner prescribed by law for service in ordinary actions.

**History.**

1876, p. 70, § 4; R.S., § 3133; am. 1899, p. 350, § 2; reen. R.C. & C.L., § 3226; C.S., § 5540; I.C.A., § 46-804.

**STATUTORY NOTES**

**Cross References.**

Form and service of summons, [Idaho R. Civ. P. 4](#).

**§ 47-905. Appointment of commissioners — Trial by court if commissioners not appointed.** — At any time after the service of the summons the plaintiff may upon ten days' notice to the defendant, apply to the district court or the judge thereof for the appointment of commissioners to assess the damages resulting from the grant of such right of way. If upon the hearing of such motion, and the affidavits and proofs offered by the respective parties, the judge shall be of the opinion that the plaintiff has made a prima facie case entitling him to the relief demanded in the complaint, or any part thereof, he shall appoint three commissioners, who must be disinterested persons, residents of the county, to assess the damages resulting to the claims, mines or lands of the defendant. But if such commissioners are not applied for and appointed, or their award is not approved by the judge or court, or if an appeal is taken from their award as hereinafter provided, the action shall be tried and determined by the court, and the provisions of the Code of Civil Procedure applicable thereto shall govern the proceedings therein as in other civil actions. Either party shall be entitled to a jury trial and may move for a new trial and appeal as in other cases.

**History.**

1876, p. 70, § 5; R.S., § 3134; am. 1899, p. 350, § 3; reen. R.C. & C.L., § 3227; C.S., § 5541; I.C.A., § 46-805.

**STATUTORY NOTES**

**Cross References.**

Appeals, § 13-201 et seq.

Condemnation proceedings in district court, § 7-701 et seq.

New trials, [Idaho R. Civ. P. 59](#).

**Compiler's Notes.**

The Code of Civil Procedure, referred to in the next-to-last sentence, is a division of the Idaho Code, consisting of Titles 1 through 13.

**§ 47-906. Oath, view, and report of commissioners.** — The commissioners so appointed must be sworn to faithfully and impartially discharge their duties, and must proceed without unreasonable delay to examine the premises and assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way affects the property of more than one person or company, such report must contain an assessment of damages to each company or person.

**History.**

1876, p. 70, § 6; R.S., § 3135; reen. R.C. & C.L., § 3228; C.S., § 5542; I.C.A., § 46-806.



**§ 47-907. Setting aside report.** — For good cause shown, the judge may set aside the report of such commissioners and appoint three (3) other commissioners whose duty shall be the same as above mentioned.

**History.**

1876, p. 70, § 7; R.S., § 3136; reen. R.C. & C.L., § 3229; C.S., § 5543; I.C.A., § 46-807.

**§ 47-908. Rights upon payment of damages.** — Upon the payment of the sum assessed as damages as aforesaid, to the persons to whom it is awarded, or a tender thereof to them, then the person petitioning as aforesaid, is entitled to the right of way prayed for in his petition, and may immediately proceed to occupy the same and erect thereon such works and structures, and make therein such excavations, as may be necessary to the use and enjoyment of the right of way so awarded.

**History.**

1876, p. 70, § 8; R.S., § 3137; reen. R.C. & C.L., § 3230; C.S., § 5544; I.C.A., § 46-808.

**§ 47-909. Appeal from commissioners' award — Bond.** — Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten (10) days after the filing of the report of the commissioners. A written notice of such appeal must be served upon the appellee in the same manner as summons is served in civil actions. The appellant must file with the clerk of the court to which the appeal is taken, a bond with sureties to be approved by the clerk in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant will pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

**History.**

1876, p. 70, § 9; R.S., § 3138; reen. R.C. & C.L., § 3231; C.S., § 5545; I.C.A., § 46-809.

**STATUTORY NOTES**

**Cross References.**

Service of summons, [Idaho R. Civ. P. 4](#).

**§ 47-910. Trial on appeal.** — An appeal brings before the district court the necessity of the right of way or easement for the successful and convenient working of the mining claim and the amount of damages; and upon such appeal the case must be tried anew, and either party is entitled to a jury.

**History.**

1876, p. 70, § 10; R.S., § 3139; reen. R.C. & C.L., § 3232; C.S., § 5546; I.C.A., § 46-810.

**§ 47-911. Effect of appeal — Bond and deposit of damages.** — The prosecution of an appeal from the award of the commissioners or from the judgment of the district court does not hinder, delay or prevent the plaintiff from exercising all the rights and privileges granted by the award or judgment, if he deposit with the clerk of the district court the full amount of the damages awarded or adjudged the defendant, and execute and deliver to the clerk a bond with sufficient sureties to be approved by the clerk, in an amount to be fixed by the judge of the district court, conditioned to pay to the defendant any additional amount, over and above the amount so deposited that the defendant may recover, and all costs to which he may be entitled under the provisions of this chapter. At any time after such deposit and before the final determination of the action the defendant may, upon demand, receive from the clerk the amount so deposited, but his acceptance of the same or any part thereof, shall bar any further prosecution of the appeal, and shall be deemed an acquiescence and consent to the award and judgment, and the defendant shall not be entitled to any costs subsequent to the judgment.

**History.**

1876, p. 70, § 11; R.S., § 3140; am. 1899, p. 350, § 4; reen. R.C. & C.L., § 3233; C.S., § 5547; I.C.A., § 46-811.

**§ 47-912. Costs of appeal.** — If the defendant recover judgment against the necessity of the easement, or for fifty dollars (\$50.00) more damages than the plaintiff has tendered him as provided in the next section, or for fifty dollars (\$50.00) more damages than the commissioners or judgment of the district court awarded him, he shall recover the costs of the appeal, otherwise he must pay all such costs.

**History.**

1876, p. 70, § 12; R.S., § 3141; am. 1899, p. 350, § 5; reen. R.C. & C.L., § 3234; C.S., § 5548; I.C.A., § 46-812.

**§ 47-913. Costs of proceedings.** — The costs and expenses of proceedings under the provisions of this chapter, except as herein otherwise provided, must be paid by the party making the application: provided, that if the applicant before the commencement of such proceedings has tendered to the parties owning or occupying the lands or mining claims, a sum equal to or more than the amount of damages recovered, all of the costs and expenses must be paid by the party or parties owning the land or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

**History.**

1876, p. 70, § 13; R.S., § 3142; reen. R.C. & C.L., § 3235; C.S., § 5549; I.C.A., § 46-813.





## Chapter 10

### MINING TUNNELS

Sec.

47-1001. Right to cross located claim.

47-1002. Owner of intersected claim may inspect tunnel.

47-1003. Title to ore taken from intersected claim.

47-1004. Burden of proof as to discovered vein.

**§ 47-1001. Right to cross located claim.** — Any person or company who has or who may hereafter have a tunnel or crosscut, the mouth of which is located upon his own ground or upon ground in his lawful occupation, shall have the right to drive and continue the same through and across any located or patented claim in front of the mouth of the tunnel, but not to follow or drive upon any vein belonging to the owner of such claim.

**History.**

1899, p. 442, § 1; reen. R.C. & C.L., § 3236; C.S., § 5550; I.C.A., § 46-901.

**CASE NOTES**

**Constitutionality and Validity.**

This act, in granting to owners of ground having a tunnel located thereon right to run same through claims of others on payment of actual damages, is not subject to objection of depriving any person of property without due process of law. *Baillie v. Larson*, 138 F. 177 (C.C.D. Idaho 1905).

Enactment of this law is authorized by 30 U.S.C.S. § 43, providing that, as a condition of sale of mineral lands, local legislature of any state may prescribe rules for working mines, involving easements, drainage, and other necessary means to their complete development. *Baillie v. Larson*, 138 F. 177 (C.C.D. Idaho 1905).

**§ 47-1002. Owner of intersected claim may inspect tunnel.** — Each tunnel or crosscut may be driven and worked for the purpose of drainage and for the purpose of reaching and working mining ground of the tunnel owner beyond the intersected claim. The owner or owners of any vein or any claim or claims so intersected, or his duly authorized agent, shall have the right to enter such tunnel upon application to the owner or owners or person in charge of said tunnel, without resorting to any process of law, for the purpose of making a survey and inspecting such vein or veins as may be crossed within the boundary lines of such intersected claim, and if the owner or owners of such tunnel shall, by bulkheading, damming back, or in any manner prevent the inspection or survey herein provided for, or if such owner or owners shall in any manner prevent the natural drainage of water from such intersected claim or claims without the consent of the owner or owners thereof, it shall work a forfeiture of all rights granted under the preceding section.

**History.**

1899, p. 442, § 2; reen. R.C. & C.L., § 3237; C.S., § 5551; I.C.A., § 46-902.

**§ 47-1003. Title to ore taken from intersected claim.** — If any ore, the property of the owner of the claim intersected or crossed, be extracted in driving such tunnel, it shall be the property of the owner of the vein from which it was taken and the owner of the tunnel shall be liable for all actual damages or injury done to the owner of the claim crossed by his tunnel.

**History.**

1899, p. 442, § 3; reen. R.C. & C.L., § 3238; C.S., § 5552; I.C.A., § 46-903.

**§ 47-1004. Burden of proof as to discovered vein.** — In all actions between the tunnel owner and others involving the right to any vein discovered in such tunnel, the burden of proving that the vein so discovered is not the property of the adverse claimant in such action shall be on the tunnel owner.

**History.**

1899, p. 442, § 4; reen. R.C. & C.L., § 3239; C.S., § 5553; I.C.A., § 46-904.



Chapter 11  
PROCEEDING BY LIENHOLDER UPON UNPATENTED  
MINING CLAIM TO PREVENT FORFEITURE

Sec.

47-1101. Order for performance of assessment work.

47-1102. Cost of assessment a lien.

**§ 47-1101. Order for performance of assessment work.** — Whenever a judgment, attachment or mortgage creditor has a lien upon unpatented mining claims in this state and the annual assessment work required by the provisions of section 2324 of the Revised Statutes of the United States, as amended by act of congress of August 24, 1921, has not been performed upon such mining claims by the first day of June in any year, the judgment, attachment or mortgage creditor may apply to the court having jurisdiction for an order allowing such judgment, attachment or mortgage creditor to perform such annual assessment work upon such unpatented mining claims in order to prevent a forfeiture of such mining claims and to preserve the lien of the judgment, attachment or mortgage until the final issuance of sheriff's deed.

**History.**

1911, ch. 174, § 1, p. 568; reen. C.L. 233:2; C.S., § 5554; am. 1923, ch. 8, § 1, p. 9; I.C.A., § 46-1001.

**STATUTORY NOTES**

**Federal References.**

Section 2324 of the Revised Statutes of the United States, referred to in this section, is codified as [30 U.S.C.S. § 28](#).

**Effective Dates.**

Section 2 of S.L. 1923, ch. 8 declared an emergency. Approved February 6, 1923.

**RESEARCH REFERENCES**

**ALR.** — Assertion of a statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold. [59 A.L.R.3d 278](#).



**§ 47-1102. Cost of assessment a lien.** — Upon the making of such order the judgment, attachment or mortgage creditor shall be authorized and empowered to incur all the expenses necessary in the performance of the annual assessment work upon such mining claims, and upon filing in the court in which such action is pending a verified statement of such expenses, the cost thereof shall be taxed in the action, suit or proceeding and become and be a lien upon said premises, and execution may issue therefor against said premises: provided, that no deficiency judgment shall be entered against the owner of said mining property for any portion of such expense if the proceeds of the sale thereof are insufficient to satisfy the same.

**History.**

1911, ch. 174, § 2, p. 569; reen. C.L. 233:1; C.S., § 5555; I.C.A., § 46-1002.



## Chapter 12

# LICENSE TAX FOR PRIVILEGE OF MINING AND EXTRACTING ORES

Sec.

47-1201. License tax to be measured by one percent of the net value of ores mined — Definition of royalty.

47-1202. Net value of ore to be used as measure of tax — How determined.

47-1203. Statement of net proceeds from mining or extracting ores — Or from royalty.

47-1204. Statement as to entire group.

47-1205. Definition of valuable mineral.

47-1206. Payment of mine license tax.

47-1207. Failure to file copy of net proceeds — Failure to pay license tax — Triple liability — Injunction. [Repealed.]

47-1208. Tax deficiency collection and enforcement procedures.

**§ 47-1201. License tax to be measured by one percent of the net value of ores mined — Definition of royalty.** — (a) Tax on mining or on receiving royalties. For the privilege of mining in this state, both placer and rock in place, every person, copartnership, company, joint stock company, trust, corporation or association, however and for whatever purpose organized, engaged in mining, upon or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, in this state containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious and valuable metals or minerals, or metal or mineral deposits, shall pay to the state of Idaho, in addition to all other taxes provided by law, a license tax equal in amount to one percent (1%) of the net value of the royalties received or the ores mined or extracted as determined under [section 47-1202, Idaho Code](#), said tax to accrue during the taxable year that the product is sold or used and shall on the last day of such taxable year become a lien on property in this state of such person, copartnership, company, joint stock company, trust, corporation, or association, said tax to be due and payable on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) Definition of royalties. For the purpose of paragraph (a) of this section and chapter, the word “royalties” shall be construed to mean the amount in money or value of property received based upon the quantity or value of minerals extracted by any person, copartnership, company, joint stock company, trust, corporation, or association, having any right, title or interest in or to any tract of land, or any economic interest in minerals as defined by [section 613 of the Internal Revenue Code](#), in this state for which permission has been given to another to explore, mine, take out and remove ore therefrom.

(c) Definition of taxable year. The term “taxable year” with respect to any taxpayer means the taxable year elected for income tax purposes under the provisions of [section 63-3010, Idaho Code](#).

### **History.**

1935 (1st E.S.), ch. 65, § 1, p. 182; am. 1941, ch. 106, § 1, p. 188; am. 1972, ch. 99, § 1, p. 209; am. 1977, ch. 93, § 1, p. 189; am. 2001, ch. 207, §

1, p. 703.

## STATUTORY NOTES

### Federal References.

Section 613 of the Internal Revenue Code, referred to in subsection (b) of this section, is compiled as 26 U.S.C.S. § 613.

## CASE NOTES

Ambiguity.

Constitutionality.

Duplicate taxation.

Placer.

Purpose.

Title of act.

Value.

### Ambiguity.

This act was held not to be incomplete, uncertain, ambiguous, and indefinite as to the property covered, the method of assessment, and the officer or board to assess and fix the tax. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### Constitutionality.

When no effort was being made to enforce this act and no effort was contemplated unless it was first judicially determined that funds were available to pay the expense of administration or a legislative appropriation had been made for that purpose, an injunction would not lie to restrain the enforcement of such act and under such state of facts the constitutionality of such act should not have been passed upon. *United Mercury Mines Co. v. Pfost*, 57 Idaho 293, 65 P.2d 152 (1937).

This law, imposing a tax on mining, is not violative of Idaho Const., Art. III, § 1, since all occupations and trades are the legitimate subject for

taxation and it makes no difference whether mining is called a “privilege” or a “right,” it is subject to taxation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

An occupation tax applied only to mining operations did not lack uniformity since the imposition operated equally on all within the particular class so selected. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

A tax on the business of mining was held not subject to the contention that it was a property or ad valorem tax, not an excise or income tax, hence, in effect, a double ad valorem tax, or, if an excise tax, violative of Idaho Const., Art. VII, § 5 as double taxation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Duplicate Taxation.**

An occupation excise tax levied on miners, as against concurrently levied ad valorem and income taxes, all for the support of the public schools, did not result in duplicate taxation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Placer.**

In suit to enjoin enforcement of occupation excise tax on mining, the word “placer” was held to tax both the privilege of lode and placer mining. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Purpose.**

The legislature intended this act to tax the mining industry as an occupation on a net yearly output basis, as reported by the miner to the assessor, less certain defined deductions. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Title of Act.**

A contention that the title of this act was insufficient because it did not specify that the proceeds of the tax went into the public school fund and because it failed to specify that a duplicate copy of the statement required under § 63-2803 to be delivered to the commissioner of law enforcement was unconstitutional was held not good since the title advised that the body

thereof fixed the distribution of the tax and the determination of its measure. Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938).

### **Value.**

The claim that “value” must be determined and that there was no one authorized to determine it was erroneous because the statute provides that the tax is to be “equal in amount to three per cent of the value of the ores mined.” Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938).

**Cited** Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940); Idaho Portland Cement Co. v. Neill, 83 Idaho 66, 357 P.2d 654 (1960); Hecla Mining Co. v. Idaho State Tax Comm’n, 108 Idaho 147, 697 P.2d 1161 (1985).

**§ 47-1202. Net value of ore to be used as measure of tax — How determined.** — For the purpose of measuring and determining the amount of tax to be paid under the provisions of [section 47-1201, Idaho Code](#), the royalties as defined in subsection (b) of [section 47-1201, Idaho Code](#), or the net value of ore mined shall be computed under one (1) of the following methods at the election of the taxpayer. Such election, once made, shall be binding for all succeeding years unless the taxpayer secures permission from the state tax commission to change to another method:

(a) Ores mined within the state shall be valued by deducting from the gross value of the ore, all costs of mining and processing such ore, using the formula prescribed in [section 613 of the Internal Revenue Code](#) and [Treasury Regulation 1.613-5](#) for computation of the net income from mining for depletion purposes, less the deduction of depletion as computed under [section 613 of the Internal Revenue Code](#) and [Treasury Regulation 1.613-5](#); or

(b) Ores mined within the state shall be valued using the gross value determined by the U.S. Department of the Interior for computation of the value of minerals on public lands for federal royalty purposes, less the following deductions:

(1) all costs of mining and transporting such ore to the point at which the value for federal royalty purposes is determined by measurement of the quantity of ore mined; these costs to include only those directly incurred in and attributable to the actual mining and transportation operation in the state of Idaho, and

(2) the applicable portion of the federal deduction for depletion, allocated on the ratio of the gross value of the ore used for this computation, to the gross value of the ore used in the federal depletion computation.

### **History.**

1935 (1st E.S.), ch. 65, § 2, p. 182; am. 1941, ch. 106, § 2, p. 188; am. 1972, ch. 99, § 2, p. 209; am. 1973, ch. 43, § 1, p. 78; am. 1977, ch. 93, § 2, p. 189; am. 1996, ch. 381, § 1, p. 1293.



## STATUTORY NOTES

### Cross References.

State tax commission, § 63-101.

### Federal References.

[Section 613 of the Internal Revenue Code](#), referred to in subdivision (a), is compiled as [26 U.S.C.S. § 613](#).

[Treasury Regulation 1.613-5](#), referred to in subdivision (a), can be found at [26 C.F.R. § 1.613-5](#).

### Effective Dates.

Section 2 of S.L. 1973, ch. 43 declared an emergency and provided for application of the act retroactive to January 1, 1972. Approved February 26, 1973.

Section 2 of S.L. 1996, ch. 381 declared an emergency. Approved March 20, 1996.

## CASE NOTES

### Depreciation of Improvements.

Under this section deductions for depreciation of improvements are permissible, even though annual deductions were also made, under the original act as moneys expended for improvements. [Day Mines, Inc. v. Lewis](#), 70 Idaho 131, 212 P.2d 1036 (1949).

**Cited** [Idaho Gold Dredging Co. v. Balderston](#), 58 Idaho 692, 78 P.2d 105 (1938); [Hecla Mining Co. v. Idaho State Tax Comm'n](#), 108 Idaho 147, 697 P.2d 1161 (1985).

**§ 47-1203. Statement of net proceeds from mining or extracting ores — Or from royalty.** — (a) Every person, copartnership, company, joint stock company, trust, corporation, or association mining or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious or valuable minerals or metals, or mineral or metal deposits, must, on or before the fifteenth day of the fourth month following the close of the taxable year make a tax return to the state tax commission, stating specifically the items of income and the deductions allowed by this act. For the purpose of enforcing this act, the income tax returns filed in accordance with the provisions of the Idaho Income Tax Act shall be open to inspection by the officer designated to enforce this act.

(b) In the event the taxpayer is entitled to an automatic extension of time to file the income tax return under [section 63-3033, Idaho Code](#), an automatic six (6) month extension is granted to file the return required under this act. In all cases of an extension of time in which to file any return, interest shall be paid on any tax due from due date to date of payment at the rate provided in [section 63-3045, Idaho Code](#).

### **History.**

1935 (1st E.S.), ch. 65, § 3, p. 182; am. 1941, ch. 106, § 3, p. 188; am. 1972, ch. 99, § 3, p. 209; am. 1977, ch. 93, § 3, p. 189; am. 1982, ch. 179, § 1, p. 466; am. 2000, ch. 26, § 1, p. 45.

## **STATUTORY NOTES**

### **Cross References.**

Idaho income tax act, § 63-3001 and notes thereto.

State tax commission, § 63-101.

### **Compiler's Notes.**

The term “this act” in subsection (a) refers to S.L. 1941, Chapter 106, which is codified as §§ 47-1201 to 47-1203.

The term “this act” at the end of the first sentence in subsection (b) refers to S.L. 1977, Chapter 93, which is codified as §§ 47-1201 to 47-1203, 47-1205, 47-1206, and 47-1208.

Probably, both references should be to “this chapter,” being chapter 12, title 47, Idaho Code.

### **Effective Dates.**

Section 4 of S.L. 1941, ch. 106 declared an emergency. Approved Mar. 7, 1941.

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

## **CASE NOTES**

Ascertainment of tax.

Constitutionality.

Powers of collecting officer.

### **Ascertainment of Tax.**

This act is not void for failing to designate any officer or body to ascertain the tax. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Constitutionality.**

This act is not unconstitutional for uncertainty since it identifies the ore or mineral the net value of which determines the amount of tax to be paid. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

This act is not a denial of due process of law. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

### **Powers of Collecting Officer.**

The fact that the commissioner of law enforcement asked for more information than was contained in required reports was not such an enlargement of, or departure from, his necessarily implied powers as collecting officer as to render his acts in this regard unconstitutional. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

**§ 47-1204. Statement as to entire group.** — Where the same person or persons are operating or leasing to another two (2) or more mines or mining claims under one (1) general system of mining or development, a duplicate copy of the statement herein provided, and the tax herein levied, shall be made as to such entire group and need not be made as to each particular mining claim constituting said group, as provided by section 63-2804[, Idaho Code].

**History.**

1935 (1st E. S.), ch. 65, § 4, p. 182; am. 1972, ch. 99, § 4, p. 209.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 5 of S.L. 1972, ch. 99 declared an emergency retroactive to January 1, 1972. Approved March 6, 1972.

**§ 47-1205. Definition of valuable mineral.** — The term “valuable mineral” for purposes of this act, shall be deemed to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to [section 613 of the Internal Revenue Code](#), provided, however, that sand and gravel are not included in this definition.

### **History.**

[I.C., § 47-1205](#), as added by 1977, ch. 93, § 4, p. 189.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 47-1205, which comprised S.L. 1935 (1st E.S.), ch. 65, § 5, p. 182, was repealed by S.L. 1969, ch. 311, § 3.

### **Federal References.**

[Section 613 of the Internal Revenue Code](#), referred to in this section, is compiled as [26 U.S.C.S. § 613](#).

### **Compiler’s Notes.**

The term “this act” refers to S.L. 1977, Chapter 93, which is codified as §§ 47-1201 to 47-1203, 47-1205, 47-1206, and 47-1208. The reference probably should be to “this chapter,” being chapter 12, title 47, Idaho Code.

**§ 47-1206. Payment of mine license tax.** — (1) Except as provided in subsection (2), the license tax imposed by this chapter shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer, who shall place sixty-six percent (66%) to the credit of the general fund of the state and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of [section 47-1703, Idaho Code](#).

(2) The license tax imposed by this chapter only on mining operations that include a cyanidation facility, as defined by [section 47-1503, Idaho Code](#), shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer who shall place thirty-three percent (33%) to the credit of the general fund of the state, thirty-three percent (33%) to the credit of the cyanidation facility closure fund created by the provisions of [section 47-1513, Idaho Code](#), and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of [section 47-1703, Idaho Code](#).

### **History.**

1935 (1st E.S.), ch. 65, § 6, p. 182; am. 1939, ch. 173, § 8, p. 320; am. 1969, ch. 311, § 1, p. 966; am. 1977, ch. 93, § 5, p. 189; am. 1999, ch. 44, § 1, p. 105; am. 2005, ch. 341, § 1, p. 1066.

## **STATUTORY NOTES**

### **Cross References.**

General fund, § 67-1205.

State tax commission, § 63-101.

State treasurer, § 67-1201 et seq.

### **Compiler's Notes.**

Section 6 of S.L. 1939, ch. 173 provided: "Proceeds from the chain store tax, mine license tax, liquor fund, and beer tax now distributed to the public school income fund shall on and after July 15, 1939, be covered into the

general fund. To conform to this change, the amendments embodied in the four following sections (§§ 7-10 of said act) are enacted.”

Section 11 of S.L. 1939, ch. 173 provided: “Whereas school finances for the school year 1938-39 have been budgeted on anticipated revenues provided by existing laws, the amendments made thereto in sections 7 to 10, inclusive, of this act shall be in force and take effect on July 15, 1939.”

**§ 47-1207. Failure to file copy of net proceeds — Failure to pay license tax — Triple liability — Injunction.[Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section, which comprised S.L. 1935 (1st E.S.), ch. 65, § 7, p. 182, was repealed by S.L. 1969, ch. 311, § 3.



**§ 47-1208. Tax deficiency collection and enforcement procedures. —**

The deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections 63-3030A, 63-3033, 63-3038, 63-3039, 63-3040, 63-3042 through 63-3065A, 63-3068, 63-3069, 63-3071, 63-3072, 63-3073 and 63-3075 through 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due. Said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this act, be described as a license tax for the privilege of mining lien or proceeding.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the state refund account created by [section 63-3067, Idaho Code](#).

**History.**

[I.C., § 47-1208](#), as added by 1969, ch. 311, § 2, p. 966; am. 1977, ch. 93, § 6, p. 189; am. 1979, ch. 48, § 2, p. 137; am. 1982, ch. 179, § 2, p. 466; am. 1986, ch. 73, § 6, p. 201; am. 1986, ch. 92, § 1, p. 269.

**STATUTORY NOTES**

**Amendments.**

This section was amended by two 1986 acts which appear to be compatible and have been compiled together.

The 1986 amendment, by ch, 73, § 6, in the second paragraph substituted “account” for “fund” preceding “created by [section 63-3067, Idaho Code](#).”

The 1986 amendment, by ch. 92, § 1, in the first paragraph added “63-3030A” following “income tax act” and “63-3069” preceding “63-3071” and “63-3072, 63-3073” following “63-3071”.

### **Compiler’s Notes.**

The term “this act” in the first paragraph refers to S.L. 1969, Chapter 311, which is codified as §§ 47-1206 and 47-1208. The reference probably should be to “this chapter,” being chapter 12, title 47, Idaho Code.

### **Effective Dates.**

Section 7 of S.L. 1977, ch. 93 provided: “(a) An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactive to January 1, 1977.

“(b) If a taxpayer is filing a mine license tax return for a taxable year other than a taxpayer’s income tax taxable year, a change to conform the mine license tax taxable year to the income tax taxable year shall be made as follows: A mine license tax return shall be filed for a twelve (12) month period ending on the last day of the income tax taxable year ending in 1977. From the mine license tax computed for such period, credit may be taken for the tax, prorated on a monthly basis, attributable to the period beginning with the first day of the income tax taxable year commencing in 1976 and ending on the last day of the mine license tax taxable year ending in 1976.

“Example: The income tax taxable year is a fiscal year ending June 30. The mine license tax taxable period is a calendar year. The mine license tax for 1976 is six hundred dollars (\$600). The mine license tax for the twelve (12) month period ending June 30, 1977, computed on the return filed to conform to the income tax taxable year, is four hundred dollars (\$400). The tax liability for the taxable year ending June 30, 1977 is one hundred dollars (\$100), computed as follows:

“Tax computed for the twelve month period ending 6-30-77  
..... \$400

“Less credit for 6/12 of \$600 ..... \$300

“Tax due for taxable year ending  
6-30-77 ..... \$100

“(c) Nothing herein shall be interpreted as a change in legislative intent with regard to the taxation of royalties, determination of value, definition of mining, or the definition of valuable mineral, including the definition of valuable mineral as including phosphate and limestone, but instead these provisions herein relating to these matters shall be interpreted as a clarification of existing law as previously enacted.” Approved March 17, 1977.

Section 3 of S.L. 1982, ch. 179 declared an emergency and made the act effective retroactively to January 1, 1982. Approved March 23, 1982.

### **CASE NOTES**

**Cited** *Hecla Mining Co. v. Idaho State Tax Comm’n*, 108 Idaho 147, 697 P.2d 1161 (1985).



## Chapter 13

### DREDGE MINING

Sec.

47-1301 — 47-1311. [Repealed.]

47-1312. Policy.

47-1313. Definitions.

47-1314. Disturbed lands to be restored — Notice and restoration of placer or dredge exploration operations.

47-1315. Water clarification.

47-1316. Administrative agency.

47-1317. Application, permit and bond required.

47-1318. Termination of permits — Hearing.

47-1319. Bond forfeiture on default.

47-1320. Hearing procedures and appeals.

47-1321. Penalties and administrative remedies. [Repealed.]

47-1322. Title.

47-1323. Dredge mining of water bodies making up the national wild and scenic rivers system prohibited.

47-1324. Enforcement and penalties for violation.

**§ 47-1301 — 47-1311. Dredge mining procedure. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1953, ch. 183, §§ 1 to 10, 12, were repealed by S.L. 1955, Init. Meas., § 12.

**§ 47-1312. Policy.** — It is hereby declared to be the policy of the state of Idaho to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest.

**History.**

1955 Init. Meas., § 1; am. 1969, ch. 281, § 1, p. 845.

**STATUTORY NOTES**

**Compiler's Notes.**

This initiative proposal was submitted to vote of the people at general election on November 2, 1954. It was adopted by a majority of the aggregate vote cast, 174,377 votes being cast for the proposal and 30,102 votes being cast against said proposal. Governor's Proclamation dated November 24, 1954 declared the same to have been approved by the people.

**CASE NOTES**

Application to federal claim.

Police power.

Time of restoration.

**Application to Federal Claim.**

In that this act is in harmony with the goal of federal legislation that the development of mining industries be carried out so as to minimize the adverse impact on environmental quality, the act is applicable to operators of dredge or placer mines on unpatented federal property. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

**Police Power.**

The policy declared in this section bears a reasonable relationship to the public health or welfare so that the enactment is within the legitimate police power of the state. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### **Time of Restoration.**

The last sentence of § 47-1314, when construed in favor of the reasonable operation of the statute, does not act to halt restoration until after mining operations have been concluded since the purpose of this chapter, as set forth in this section, would be emasculated if that interpretation were adopted. *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981), cert. denied, 457 U.S. 1116, 102 S. Ct. 2927, 73 L. Ed. 2d 1328 (1982).



**§ 47-1313. Definitions.** — As used in this chapter:

(a) “Board” means the state board of land commissioners or such representative as may be designated by the board.

(b) “Director” means the director of the department of lands or such representative as may be designated by the director.

(c) “Disturbed land” means land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore or wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations.

(d) “Mineral” means any ore, rock, or substance extracted from a placer deposit or from an existing placer stockpile or waste pile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil, or gas.

(e) “Motorized earth-moving equipment” means backhoes, bulldozers, front loaders, trenchers, core drills, suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment.

(f) “Natural watercourse” means any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water.

(g) “Permit area” means that area designated under [section 47-1317, Idaho Code](#), as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation.

(h) “Person” means any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(i) “Placer deposit” means naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse.

(j) “Placer or dredge exploration operation” means activities including, but not limited to, the construction of roads, trenches, and test holes, performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining.

(k) “Placer or dredge mining” or “dredge or other placer mining” means the extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. The term “dredge or other placer mining,” wherever used in this chapter, is subject to this definition and all provisions regarding it.

(l) “Placer or dredge mining operation” means placer or dredge mining which disturbs in excess of one-half ( $\frac{1}{2}$ ) acre of land.

(m) “Road” means a way, including bed, slopes, and shoulders, (1) constructed within the circular tract circumscribed by a placer or dredge mining operation, or (2) constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation, provided, that a way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations, and not constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation, shall not be considered a road for purposes of this act.

### **History.**

I.C., § 47-1313, as added by 1984, ch. 102, § 2, p. 232.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 47-1313, which comprised 1955 Init. Meas., § 2; am. 1969, ch. 281, § 2, p. 845, was repealed by S.L. 1984, ch. 102, § 1, effective July 1, 1984.

## **CASE NOTES**

**Cited** *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981).

**§ 47-1314. Disturbed lands to be restored — Notice and restoration of placer or dredge exploration operations.** — (a) Any person conducting a placer or dredge mining operation shall, within one (1) year of permanent cessation of operations as to the whole or any part of the permit area, commence restoration of disturbed lands in the permit area or in any portion thereof as to which operations are permanently ceased. In accordance with a permit approved for the operation under [section 47-1317, Idaho Code](#), surfaces shall be returned to a contour reasonably comparable to that contour existing prior to disturbance, topsoil shall be replaced where deemed appropriate by the board, and vegetation shall be planted reasonably comparable to that vegetation existing prior to disturbance. Any disturbed natural watercourse shall be restored to a configuration and pool structure conducive to good fish and wildlife habitat and recreational use.

(b) Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, prior to or within seven (7) days of commencing exploration, notify the director in writing of the name and address of the person, and the location, anticipated size, and method of exploration. Such notice shall be subject to disclosure according to chapter 1, title 74, Idaho Code. Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (½) acre of land, including roads, shall be considered a placer or dredge mining operation. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (½) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation.

### **History.**

[I.C., § 47-1314](#), as added by 1984, ch. 102, § 3, p. 232; am. 1990, ch. 213, § 64, p. 480; am. 2015, ch. 141, § 121, p. 379; am. 2018, ch. 76, § 1, p. 171.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 47-1314, which comprised 1955, Init. Meas., § 3; am. 1969, ch. 281, § 3, p. 845, was repealed by S.L. 1984, ch. 102, § 1, effective July 1, 1984.

### **Amendments.**

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the first sentence of subsection (b).

The 2018 amendment, by ch. 76, in the first sentence of subsection (b), inserted “prior to or” and substituted “in writing” for “by certified mail”.

### **Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

## **CASE NOTES**

### **Constitutionality.**

### **Federal mining claims.**

### **Constitutionality.**

The land restoration requirement of this section is reasonably related to the legitimate police power purposes of the dredge mining act and, thus, did not constitute a taking of private property without just compensation. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976); *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981), cert. denied, 457 U.S. 1116, 102 S. Ct. 2927, 73 L. Ed. 2d 1328 (1982).

### **Federal Mining Claims.**

The requirement in former section that the operator of a dredge or placer mine restore the land did not conflict with rights granted by federal legislation to miners who conducted a dredge mining operation upon unpatented federal public domain land. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976); *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981), cert. denied, 457 U.S. 1116, 102 S. Ct. 2927, 73 L. Ed. 2d 1328 (1982).

**§ 47-1315. Water clarification.** — Where any person conducts a placer or dredge mining operation where the water used in such mining process flows in, or into a natural watercourse, such person shall construct and use settling ponds of sufficient capacity and character and/or install and use filtration processes fully adequate to clarify the water used in the mining process to conform to the standards and rules of the state department of environmental quality regarding water quality as authorized under chapter 1, title 39, Idaho Code, before such water is discharged into the natural watercourse.

**History.**

1955, Init. Meas., § 4; am. 1969, ch. 281, § 4, p. 845; am. 1984, ch. 102, § 4, p. 232; am. 2001, ch. 103, § 87, p. 253.

**§ 47-1316. Administrative agency.** — The Idaho state board of land commissioners is hereby designated the administrative agency of this act and shall have the power and duty to adopt rules and regulations for its administration in accordance with the intent and purposes thereof, and to employ personnel necessary to effectually carry out this law. Such board may make such inquiries and investigations and conduct such hearings as the board shall deem advisable or necessary.

**History.**

1955, Init. Meas., § 5; am. 1969, ch. 281, § 5, p. 845.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Compiler's Notes.**

The terms “this act” and “this law” in the first sentence refer to S.L. 1955 Initiative Measure, which is compiled as §§ 47-1312, 47-1315 to 47-1319 and 47-1322. The reference probably should be to “this chapter,” being chapter 13, title 47, Idaho Code.

**CASE NOTES**

**Adoption of Rules.**

Although this section did not provide for a hearing upon the imposition or change of rules and regulations, permittees were not denied procedural due process since the adoption of rules and regulations would be covered by procedures set forth in administrative procedures act. [State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 \(1976\).](#)

**§ 47-1317. Application, permit and bond required.** — (a) Before any person may conduct a placer or dredge mining operation on lands or natural watercourses in the state of Idaho, such person shall file with the director an application for a permit upon a form provided by the director, and shall pay an application fee of fifty dollars (\$50.00), for each ten (10) acres or fraction thereof above involved in such application, provided that no application fee shall exceed one thousand dollars (\$1,000). Application fees shall be deposited in the dredge and placer mining account.

(b) The permit to issue in any such case shall be in a form provided and approved by the board. No such permit shall be issued to any applicant until the applicant files with the director an initial bond in an amount necessary to pay the estimated reasonable costs of reclamation required under the permit for each acre of land to be disturbed during the first season of operation plus ten percent (10%). The amount of the bond shall not exceed one thousand eight hundred dollars (\$1,800) per acre of disturbed land. At the beginning of each calendar year or before operations begin, the operator shall notify the director of any increase or decrease in the acreage of disturbed lands which will result from planned placer mining activity within the next operating season. A correlated increase or decrease in the bond shall be required by the director for a change in disturbed acreage. In the event of failure by the permittee to reclaim disturbed lands in the permit area, the cost charged to the permittee shall be reasonable costs of reclamation plus ten percent (10%); provided that in no event shall any bond submitted pursuant to this section exceed one thousand eight hundred dollars (\$1,800) for any given acre of disturbed land. The determination by the board of reclamation costs shall constitute a final decision subject to judicial review as set forth in subsection (d)[(c)] of [section 47-1320, Idaho Code](#). The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the director, provided that any bond shall be in the applicable amount set forth above.

(c) It shall be unlawful for any person to conduct placer or dredge mining operations in this state without first having obtained a permit and bond as herein provided. The board shall determine whether a permit application and bond submitted by an applicant satisfies the requirements of this act and

regulations promulgated thereto. Upon such determination, the board shall notify the applicant in writing of approval or denial of the permit application and bond. Any notice of rejection shall state the reasons for such rejection. An applicant may submit an amended permit application and bond.

(d) It shall be the duty of the board in its administration of this act to cause periodic inspections to be made of the operations under such permits to determine compliance with this law and to make rules and regulations with respect thereto and the cost and expense of making such inspections shall be borne by the permittee, which such costs and expenses shall constitute a lien upon equipment, personal property, or real property of the permittee and upon minerals produced from the permit area, and the failure to pay the amount thereof on demand by the board shall be cause for termination of the permit. All inspection fees shall be deposited in the dredge and placer mining account.

(e) The board may release an applicant from the requirement that the applicant submit a bond if the director determines that the applicant has insured faithful performance of the requirements of this act and regulations promulgated thereto pertinent to land and watercourse restoration by submitting and having on file a current and valid bond with the United States government, which bond equals or exceeds the amount set forth above, provided that such release by the director shall not release an applicant from bonding under this act, should the permittee fail to continuously maintain a valid bond with the United States government or from compliance with any other requirement of this act or regulations promulgated thereto.

(f) Upon determination by the director that restoration has been satisfactorily completed on a portion of a permit area in accordance with the applicable approved permit and with subsection (a) of [section 47-1314, Idaho Code](#), the board may reduce the bond amount to reflect the completed restoration.

(g) That if any applicant for such dredge or other placer mining operations as contemplated by this act be not the owner of the lands described in the application or any part thereof, the owner of such lands shall indorse his approval of the application, and no permit shall be issued



in the absence of such approval by the owner of lands described in the application not owned by the applicant.

(h) No permit shall be issued proposing to alter or occupy the bed of a navigable stream or to dredge any stream or watercourse without notification to the department of water resources of the pending application. The department of water resources shall respond to said notification within twenty (20) days, and the response shall be included in any permit granted hereunder by a showing whether the permit constitutes a permit from the department of water resources or whether an additional permit from the department of water resources shall be required.

(i) No permit shall issue hereunder to dredge nor otherwise placer mine any lands owned by the state of Idaho, including the beds of navigable streams, and including the mineral reservations in lands sold by the state, unless a mineral lease shall be made of such terms and at such royalty to the state as its board of state land commissioners shall prescribe and determine.

(j) The Idaho state board of land commissioners shall have the power to deny any application for a permit on state land, stream or river beds, or on any unpatented mining claims, upon its determination that a dredge mining operation on the land proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat and other factors which in the judgment of the state land board may be pertinent, and may deny an application upon notification by the department of water resources that the grant of such permit would result in permanent damage to a stream channel.

(k) Upon default, in the event that the amount of the bond is insufficient to reclaim the land in compliance with the act and the approved plan, the attorney general is empowered to commence legal action against the operator in the name of the board to recover the amount in excess of the bond necessary to reclaim the land in compliance with the act and the approved plan.

### **History.**

1955, Init. Meas., § 6; am. 1957, ch. 325, § 1, p. 685; am. 1969, ch. 281, § 6, p. 845; am. 1974, ch. 17, § 34, p. 308; am. 1976, ch. 150, § 4, p. 539;

am. 1980, ch. 278, § 1, p. 722; am. 1984, ch. 102, § 5, p. 232; am. 1993, ch. 308, § 1, p. 1137.

## STATUTORY NOTES

### Cross References.

Attorney general, § 67-1401 et seq.

Department of water resources, § 42-1701 et seq.

Dredge and placer mining account, § 47-1319.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

### Compiler's Notes.

The term “this act” in subsections (c) and (e) refers to S.L. 1984, Chapter 102, which is compiled as §§ 47-1313 to 47-1315, 47-1317, 47-1319, 47-1320, and 47-1324.

The term “this act” in subsections (d) and (g) refers to the 1955 Initiative Measure, which is compiled as §§ 47-1312, 47-1315 to 47-1319 and 47-1322.

Probably, both references should be to “this chapter,” being chapter 13, title 47, Idaho Code.

The bracketed reference near the end of subsection (b) was inserted by the compiler to correct the statutory reference, following the 1993 amendment of § 47-1320.

### Effective Dates.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

Section 9 of S.L. 1984, ch. 102 provided: “This act shall be in full force and effect on and after July 1, 1984, provided that any person conducting a placer or dredge mining operation under a valid state permit and bond as of July 1, 1984, shall not be required to obtain an amended permit or bond conforming to this act prior to July 1, 1985.”

Section 2 of S.L. 1993, ch. 308 declared an emergency. Approved March 31, 1993.

## CASE NOTES

Constitutionality.

Denial of application.

Federal mining claims.

Lien on machinery.

Lien on minerals.

U.S. as landowner.

### Constitutionality.

The permit and bonding requirements of this section are reasonably related to the legitimate police power purposes of the dredge mining act and, thus, do not constitute a taking of private property without just compensation. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### Denial of Application.

The power to deny applications for permits granted to the board of land commissioners in subsection (i) of this section does not constitute an unconstitutional delegation of legislative power, in view of procedure for review of board decisions provided for in § 47-1320. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### Federal Mining Claims.

The requirement in this section that the operator of a dredge or placer mine obtain a state permit did not conflict with rights granted by federal legislation to miners who conducted a dredge mining operation upon unpatented federal public domain land. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### Lien on Machinery.

A district court's imposition of a "lien" upon a mining partnership's machinery and claims in order to secure the costs of preparing a land

restoration plan and contingent restoration costs was an action which, in effect, replaced the security ordinarily assured by the statutory bond required by this section and was within the inherent power of the court under § 1-1603 to insure compliance not only with the intent of the statute but also with its own related orders. *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981), cert. denied, 457 U.S. 1116, 102 S. Ct. 2927, 73 L. Ed. 2d 1328 (1982).

### **Lien on Minerals.**

Although the lien for inspection costs provided for in subsection (d) of this section could not attach to unpatented federal public domain land, the lien could attach to the minerals produced therefrom. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

Procedural due process does not require notice or hearing prior to imposition of lien on minerals under subsection (d) of this section; although a judgment foreclosing the lien for inspection costs could not be rendered against operator of dredge mine without notice and an opportunity to be heard. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### **U.S. as Landowner.**

Where mining partnership conducted dredge mining operation upon unpatented federal public domain land under valid federal mining claims, the federal government was not subject to requirement that the landowner endorse its approval on mining partnership's application for state permit. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

**§ 47-1318. Termination of permits — Hearing.** — Without in any manner affecting the penal and injunctive provisions of this act the Idaho state board of land commissioners is empowered to commence proceedings to terminate any permit to conduct dredge or other placer mining operations issued hereunder for any violation of the terms of this act, after having issued and served upon the permittee alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the permittee allegedly is violating, and a statement of the manner in and the extent to which said permittee is alleged to be violating the provisions of this act. Such notice may be served by certified mail, and return receipt signed by the permittee or his agent shall constitute service and time thereof of such notice. The permittee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the permittee fails to answer the complaint and to request a hearing, the matters asserted in the complaint shall be deemed admitted by the permittee, and the board may proceed to terminate the permit and forfeit the bond in an amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of the defaulting permittee. Upon request for a hearing by a permittee, the board shall schedule a hearing not less than thirty (30) days after the date the permittee requests a hearing. The provisions of chapter 52, title 67, Idaho Code, shall govern proceedings instituted pursuant to this section. The board may designate one (1) of its members, or a hearing officer or officers to conduct any hearings and enter recommended or preliminary orders, as determined by the board, on issues involving the administration of this act.

Upon entry of a final order terminating a permit or forfeiting a bond, the board shall assess the costs of the hearing against the defaulting permittee.

### **History.**

1955, Init. Meas., § 7; am. 1969, ch. 281, § 7, p. 845; am. 1986, ch 82, § 1, p. 242; am. 1988, ch. 72, § 1, p. 102; am. 1993, ch. 216, § 44, p. 587.

## STATUTORY NOTES

### Compiler's Notes.

The first two references to “this act” in the first sentence and the reference at the end of the first paragraph refer to the 1955 Initiative Measure, which is compiled as §§ 47-1312, 47-1315 to 47-1319 and 47-1320. The third and fourth references to “this act” in the first paragraph refer to S.L. 1988, Chapter 72, which is compiled as §§ 47-1318, 47-1319, and 47-1324.

Probably, each of these references should be to “this chapter,” being chapter 13, title 47, Idaho Code.

## CASE NOTES

**Cited** *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

**§ 47-1319. Bond forfeiture on default.** — (a) The surety bond required by this act to be given by a permittee for dredge or other placer mining purposes under permit shall be exonerated and discharged upon the completion or termination of such mining operation as specified in the permit granted therefor and upon full compliance with the requirements of this act and the rules and regulations of said board of land commissioners made for the administration thereof.

(b) That in event the holder of any permit issued under this act fails to comply with the requirements of this act and the rules and regulations of the Idaho board of land commissioners for the administration hereof, then the applicable bond of such permittee shall be forfeited to the state of Idaho in such amount and to such extent as the state board of land commissioners shall estimate and determine will be necessary to pay all cost and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of said defaulting permittee and covered by such bond and remaining unrestored, and such forfeited funds are to be deposited in the dredge and placer mining account, which is hereby created in the dedicated fund of the state treasury. All moneys deposited in the dredge and placer mining account pursuant to this section or other provisions of this chapter shall be utilized by the state board of land commissioners for the restoration of lands and watercourses damaged by placer or dredge mining operations.

(c) No forfeiture of bond of a permittee shall be made until after procedures have been followed as provided in sections 47-1318 and 47-1320, Idaho Code, and the complaint is issued and findings of facts and rulings of law in support of the order of forfeiture, if any, have been made and the time for appeal has expired.

### **History.**

1955, Init. Meas., § 8; am. 1957, ch. 325, § 2, p. 685; am. 1969, ch. 281, § 8, p. 845; am. 1984, ch. 102, § 6, p. 232; am. 1988, ch. 72, § 2, p. 102.

## **STATUTORY NOTES**

### **Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Compiler's Notes.**

The references to “this act” in subsection (a) and the second reference to “this act” in subsection (b) refer to the 1955 Initiative Measure, which is compiled as §§ 47-1312, 47-1315 to 47-1319 and 47-1320. The first reference to “this act” in subsection (b) refers to S.L. 1969, Chapter 281, which is compiled as §§ 47-1312, 47-1315 to 47-1320, and 47-1322.

Probably, these references should all read “this chapter,” being chapter 13, title 47, Idaho Code.

**CASE NOTES**

**Cited** **State ex rel. Andrus v. Click**, 97 Idaho 791, 554 P.2d 969 (1976).



**§ 47-1320. Hearing procedures and appeals.** — (a) Process and procedure under this act shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity. Such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. The board, or any member thereof, or the hearing officer designated by such board, shall have power to subpoena witnesses and administer oaths. The district court shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production for examination of books, papers and records. Witnesses subpoenaed by the board or a member thereof or the hearing officer shall be allowed such fees and traveling expenses as are allowed in civil actions in the district court, to be paid by the party in whose interest such witnesses are subpoenaed. The board, or any member thereof, or the hearing officer, shall make such inquiries and investigations as shall be deemed relevant. Each hearing shall be held at the county seat in any county where the dredge or other placer mining is being conducted or where any of the lands involved in the hearing are situate, or in the county of Ada, as the board may designate.

(b) If the hearing involves a permit or application for a permit, the final order of the board, together with the agency record, as provided in chapter 52, title 67, Idaho Code, shall be filed in the office of the director of the department of lands. A copy of the order shall be sent to the applicant or holder of the permit involved in such hearing by United States mail.

(c) Any applicant or permit holder aggrieved by any final decision or order of the board shall be entitled to judicial review in accordance with the provisions and standards set forth in chapter 52, title 67, Idaho Code.

### **History.**

**I.C., § 47-1320**, as added by 1969, ch. 281, § 9, p. 845; am. 1984, ch. 102, § 7, p. 232; am. 1993, ch. 216, § 45, p. 587.

## **STATUTORY NOTES**

### **Cross References.**

Director of department of lands, § 58-105.

## **Compiler's Notes.**

A prior provision from § 9 of S.L. 1955, Init. Meas., formerly compiled as § 47-1320, that provided for direct appeals to the supreme court, was held unconstitutional in *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

The term “this act” near the beginning of subsection (a) refers to S.L. 1969, Chapter 281, which is compiled as §§ 47-1312, 47-1315 to 47-1320, and 47-1322. The reference probably should be to “this chapter,” being chapter 13, title 47, Idaho Code.

## **CASE NOTES**

**Cited** *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

### **Decisions Under Prior Law**

**Appeals.**

**Constitutionality.**

**Separability.**

**Appeals.**

Although the case was before the supreme court on appeal where it had been concluded that no right of appeal existed from the board of land commissioners under the Idaho dredge mining protection act to the supreme court, nevertheless for a proper and orderly disposition of the problem presented, the case would be considered as being before the court on certiorari. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

Where there was no valid provision for appeal from the order of the board of land commissioners in the Idaho dredge mining protection act and there was no other protection for the property right of the appellant, and the character of the duties and orders of the board of land commissioners and its duly designated hearing agent being judicial in nature, appellant under the act was without remedy to protect his constitutional rights and the order which revoked the dredge mining permit was null and void. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

**Constitutionality.**

That provision of the Idaho dredge mining protection act which provided for an appeal from the board of land commissioners directly to the supreme court was unconstitutional and void as being an attempt to evade judicial processes by legislation. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

### **Separability.**

Because the provision of the dredge mining protection act which provided for an appeal directly to the supreme court does not in itself appear to be an integral or indispensable part of the act, it may be stricken therefrom without affecting the balance of the act. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

**§ 47-1321. Penalties and administrative remedies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1955, Init. Meas., § 10; am. 1957, ch. 325, § 3, p. 685; am. 1969, ch. 281, § 10, p. 845, was repealed by S.L. 1984, ch. 102, § 1, effective July 1, 1984.

**§ 47-1322. Title.** — This act may be cited as the “Idaho Dredge and Placer Mining Protection Act.”

**History.**

1955, Init. Meas., § 13; am. 1969, ch. 281, § 11, p. 845.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to the 1955 Initiative Measure, which is compiled as §§ 47-1312, 47-1315 to 47-1319 and 47-1322. The reference probably should be to “this chapter,” being chapter 13, title 47, Idaho Code.

**§ 47-1323. Dredge mining of water bodies making up the national wild and scenic rivers system prohibited.** — Dredge mining in any form shall be prohibited on:

(1) The middle fork of the Clearwater river, from the town of Kooskia upstream to the town of Lowell; the Lochsa river from its junction with the Selway at Lowell forming the middle fork, upstream to the Powell ranger station; and the Selway river from Lowell upstream to its origin;

(2) The middle fork of the Salmon river, from its origin to its confluence with the main Salmon river;

(3) The St. Joe river, including tributaries, from its origin to its confluence with Coeur d'Alene lake, except for the St. Maries river and its tributaries.

**History.**

I.C., § 47-1323, as added by 1970, ch. 244, § 1, p. 659; am. 1977, ch. 114, § 1, p. 246.

**CASE NOTES**

**Cited** State ex rel. Evans v. Click, 102 Idaho 443, 631 P.2d 614 (1981).

**§ 47-1324. Enforcement and penalties for violation.** — (a) The board may maintain an action in the name of the state of Idaho to enjoin any person from operating or maintaining a placer or dredge mining operation without holding a valid permit or bond as provided in this act or regulations promulgated thereto. The court, or a judge thereof at chambers, if satisfied from a complaint or by affidavits that the alleged acts have been or are being committed, may issue a temporary restraining order, without notice or bond, enjoining the defendant, his agents and employees, from operating or maintaining such placer or dredge mining operation without obtaining a permit and bond as provided in this act or regulations promulgated thereto. No showing of injury shall be required other than that this act is being violated by the operation or maintenance of a placer or dredge mining operation without the approved permit and bond. Upon a showing of good cause therefor, the court may require the defendant to undertake mitigation or restoration of the disturbed area in conformity with [section 47-1314, Idaho Code](#), pending final disposition of the action. The action shall proceed as in other cases for injunctions. If at the trial the operation and maintenance of a placer or dredge mining operation without a permit or bond be established, and the court further finds that it is probable that the defendant will continue therein or in similar violations, the court shall enter a decree perpetually enjoining said defendant, his agents and employees from thereafter committing said or similar actions in violation of this act.

(b) The board may maintain an action in the name of the state of Idaho to enjoin any person from operating or maintaining a placer or dredge mining operation when, under an existing approved permit and bond, a permittee violates or exceeds the terms of the permit or violates a provision of this act, and the bond, if forfeited, would not be sufficient to adequately restore the land.

(c) In addition to the injunctive provisions above, the board may maintain a civil action against any person who violates any provision of this act to collect civil damages in an amount sufficient to pay for all the damages to the state caused by such violation, including but not limited to, costs of restoration in accordance with [section 47-1314, Idaho Code](#), where a person is conducting placer or dredge mining without an approved permit or bond.

(d) Notwithstanding any other provisions of this act, any person who violates any of the provisions of this act or regulations promulgated thereto, or who violates any determination or order promulgated pursuant to the provisions of this act, shall be liable for a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each day during which such violation continues. Such penalty shall be recoverable in an action brought in the name of the state of Idaho by the attorney general. All sums recovered shall be placed in the state treasury and credited to the dredge and placer mining account, to be administered by the board for the restoration of lands and watercourses damaged by placer or dredge mining operations.

(e) No administrative action or decision by the director or board shall be required prior to enforcement of any of the above remedies, provided that no permit shall be terminated and no bond shall be forfeited without administrative action as provided under sections 47-1318 and 47-1319, Idaho Code. No administrative action or decision by the Idaho board of health and welfare shall be required prior to enforcement of any of the above remedies by the state of Idaho against any person violating [section 47-1315, Idaho Code](#).

(f) Any person who wilfully or knowingly falsifies any records, plans, specifications, or other information required by the board or wilfully fails, neglects, or refuses to comply with any provisions of this act shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or imprisonment not to exceed one (1) year, or both.

(g) All civil actions provided for in this section shall be filed in the district court of this state for the county wherein the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides or has a principal place of business, or in the district court for the county of Ada if the defendant resides out-of-state, or in the appropriate court of the United States where the rules and statutes governing such courts permit.

### **History.**

[I.C., § 47-1324](#), as added by 1971, ch. 208, § 1, p. 917; am. 1984, ch. 102, § 8, p. 232; am. 1988, ch. 72, § 3, p. 102.



## STATUTORY NOTES

### Cross References.

Attorney general, § 67-1401 et seq.

Board of health and welfare, § 56-1005.

Dredge and placer mining account, § 47-1319.

### Compiler's Notes.

The first two references in subsection (a) and the last reference in subsection (a) to “this act” refer to S.L. 1971, Chapter 208, which is codified as this section.

The remaining references to “this act” refer to S.L. 1984, Chapter 102, which is compiled as §§ 47-1313 to 47-1315, 47-1317, 47-1319, 47-1320, and 47-1324.

Probably, these references should all read “this chapter,” being chapter 13, title 47, Idaho Code.

### Effective Dates.

Section 9 of S.L. 1984, ch. 102 provided: “This act shall be in full force and effect on and after July 1, 1984, provided that any person conducting a placer or dredge mining operation under a valid state permit and bond as of July 1, 1984, shall not be required to obtain an amended permit or bond conforming to this act prior to July 1, 1985.”

## CASE NOTES

**Cited** *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976); *State ex rel. Evans v. Click*, 102 Idaho 443, 631 P.2d 614 (1981).



Chapter 14  
MINERAL LEASES BY POLITICAL SUBDIVISIONS AND  
MUNICIPALITIES

Sec.

47-1401. Lease for exploration and development authorized.

47-1402. Cooperative or unit development.

47-1403. Rules for issuing lease — Term — Royalty.

**§ 47-1401. Lease for exploration and development authorized.** — The governing body of any county, city, town, village, school district or other municipal corporation or political subdivision of the state of Idaho authorized to acquire and hold real property may, upon determining that such action will be in the best interest of such county, city, town, village, school district or other municipal corporation or political subdivision of the state of Idaho, lease, or enter into a community lease with respect to, any mineral interest owned by such county, city, town, village, school district or other municipal corporation or political subdivision of the state of Idaho, for the exploration for and development and production of oil, gas or other hydrocarbons, and otherwise contract for such exploration, development and production, upon such terms as such governing body may determine and as are not inconsistent with the provisions of this act.

**History.**

1961, ch. 100, § 1, p. 149.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” at the end of the section refers to S.L. 1961, Chapter 100, which is compiled as §§ 47-1401 to 47-1403.

**§ 47-1402. Cooperative or unit development.** — Any such governing body may, by such lease or contract, or by other agreement, include, or provide for the inclusion of, any such interest with other interests in any plan or agreement for cooperative or unit development or operation for oil, gas or other hydrocarbons, and modify and change any and all terms of any such lease or contract heretofore entered into or hereafter entered into under the provisions of this act, including the extension of the terms of any such lease or contract for the full period of time such cooperative or unit plan or agreement may remain in effect, as required to conform the terms of any such lease or contract to such cooperative or unit plan or agreement.

**History.**

1961, ch. 100, § 2, p. 149.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of the section refers to S.L. 1961, Chapter 100, which is compiled as §§ 47-1401 to 47-1403.

**§ 47-1403. Rules for issuing lease — Term — Royalty.** — Any such governing body may, in its discretion, make and establish such rules and regulations governing the issuance of such leases and contracts as are not inconsistent with provisions of this act. Any such lease or contract (1) shall be entered into pursuant to resolution duly adopted by the governing body, (2) may be for a term not exceeding ten (10) years and as long thereafter as oil, gas or other hydrocarbons shall be, or can be, produced in commercial quantities, except as such term may be extended pursuant to the provisions of section 47-1402[, Idaho Code], and (3) shall reserve to the governing body a royalty of not less than one-eighth (1/8) of all oil, gas or other hydrocarbons produced from said lands.

**History.**

1961, ch. 100, § 3, p. 149.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” at the end of the first sentence refers to S.L. 1961, Chapter 100, which is compiled as §§ 47-1401 to 47-1403.

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.



## Chapter 15

### MINED LAND RECLAMATION

Sec.

47-1501. Purpose of chapter.

47-1502. Short title.

47-1503. Definitions.

47-1504. Board of land commissioners — Responsibility.

47-1505. Duties and powers of board.

47-1506. Operator — Duties prior to operation — Submission of maps and plans.

47-1507. Plan — Approval or rejection by board — Hearing.

47-1508. Amended plan — Supplemental plan — Submission.

47-1509. Procedures in reclamation.

47-1510. Vegetation planting.

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47-1512. Financial assurance — Requisites.

47-1513. Operator's failure to comply — Forfeiture of financial assurance — Penalties — Reclamation fund — Cyanidation closure fund.

47-1514. Appeal from final order — Procedure.

47-1515. Information.

47-1516. Deposit of forfeitures and damages.

47-1517. Conduct of activities.

47-1518. Effective date — Application of chapter.

47-1519. Application of chapter to mineral extraction for public highway purposes.



**§ 47-1501. Purpose of chapter.** — It is the purpose of this chapter to provide for the protection of the public health, safety and welfare through measures to reclaim the surface of all the lands within the state disturbed by exploration and surface and underground mining operations and measures to assure the proper closure of cyanidation facilities and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, and aquatic resources, and reduce soil erosion.

**History.**

1971, ch. 206, § 1, p. 898; am. 1973, ch. 180, § 1, p. 415; am. 2005, ch. 167, § 3, p. 509; am. 2019, ch. 226, § 2, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, substituted “surface and underground mining” for “surface mining” near the middle of the section.

**CASE NOTES**

**Trespassers on Mining Lands.**

Since the Idaho Surface Mining Act (§ 47-1501 et seq.) provides no affirmative duty to protect trespassers on mining lands, and it applies only after abandonment of the mine, the act created no duty of care in favor of the plaintiff, a trespasser, who was injured when he fell over the edge of a sandpit. *Cooper v. Unimin Corp.*, 639 F. Supp. 1208 (D. Idaho 1986).

**Cited** *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

**§ 47-1502. Short title.** — This act shall be known and may be cited as the “Idaho mined land reclamation act.” The reclamation provisions of this act shall not apply to mining operations regulated by the Idaho dredge and placer mining protection act, nor shall such provisions apply to any workings at an underground mine below the surface.

**History.**

1971, ch. 206, § 2, p. 898; am. 2005, ch. 167, § 4, p. 509; am. 2019, ch. 226, § 3, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, rewrote the first sentence, which formerly read: “This act may be known and cited as ‘the Idaho surface mining act.’”; and added “nor shall such provisions apply to any workings at an underground mine below the surface” at the end of the last sentence.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.

The Idaho dredge and placer mining protection act, referred to in the second sentence, is compiled as §§ 47-1312 to 47-1324.

**§ 47-1503. Definitions.** — Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) “Board” means the state board of land commissioners or such department, commission, or agency as may lawfully succeed to the powers and duties of such board.

(2) “Cyanidation” means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for the extraction.

(3) “Cyanidation facility” means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide-containing materials including spent ore, tailings, and process water.

(4) “Director” means the head of the department of lands or such officer as may lawfully succeed to the powers and duties of said director.

(5) “Affected land” means the land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds and other areas disturbed on the surface of mining operations.

(6) “Mineral” means coal, clay, stone, sand, gravel, metalliferous and nonmetalliferous type of ores, and any other similar solid material or substance of commercial value to be excavated from natural deposits on or in the earth.

(7) “Mining operations” means the activities performed on the surface of a surface or underground mine in the extraction of minerals from the ground, including the excavating of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, (a) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or (b) which, exclusive of exploration roads, result during a period of twelve (12) consecutive months in newly affected land consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen

percent (15%) of the total area of any circular tract that includes such affected land, shall be deemed to be a surface mining operation for the purposes of this chapter.

(8) “Exploration operations” means activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof.

(9) “Surface mine” means an area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed.

(10) “Underground mine” means an area where minerals are extracted from beneath the surface of the ground by means of an adit, shaft, tunnel, decline, portal, bore hole, drill hole for solution mining, or such other means of access beneath the surface of the ground, other than a pit.

(11) “Mined area” means surface of land from which overburden, waste rock, or minerals have been removed other than by drilling of exploration drill holes.

(12) “Overburden” or “waste rock” means material extracted by an operator that is not a part of the material ultimately removed from a surface mine or underground mine and marketed by an operator, exclusive of mineral stockpiles.

(13) “Overburden disposal area” means land surface upon which overburden or waste rock is placed or planned to be placed.

(14) “Exploration drill holes” means holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof.

(15) “Exploration roads” means roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

(16) “Exploration trenches” means trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof.

(17) “Peak” means a projecting point of overburden.

(18) “Significant change” means, for an underground mine, a fifty percent (50%) increase in the areal extent of the disturbed affected land.

(19) “Mine panel” means that portion of a mine designated by an operator as a panel of a surface mine or the surface effects of an underground mine on the map submitted pursuant to [section 47-1506, Idaho Code](#).

(20) “Mineral stockpile” means minerals extracted during surface mining operations and retained at the surface mine for future rather than immediate use.

(21) “Permanent closure plan” means a description of the procedures, methods, and schedule that will be implemented to meet the intent and purposes of this chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site-specific conditions.

(22) “Pit” means an excavation created by the extraction of minerals or overburden at a surface mine.

(23) “Ridge” means a lengthened elevation of overburden.

(24) “Road” means a way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof.

(25) “Operator” means any person or persons, any partnership, limited partnership, corporation, or limited liability company, or any association of persons, either natural or artificial, including, but not limited to, every public or governmental agency engaged in mining operations or exploration operations or in operating a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors, and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of this chapter.

(26) “Hearing officer” means that person selected by the board to hear proceedings under [section 47-1513, Idaho Code](#).

(27) “Final order of the board” means a written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available.

(28) “Tailings pond” means an area on the surface of a mining operation enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface or underground mine.

(29) “Financial assurance” means monetary assurances in such form and amount as are necessary for the board or a third party to perform the reclamation activities required in this chapter.

(30) “Post-closure” means a description of the procedures, methods, and schedule for monitoring, care and maintenance, and water management that will be implemented on a mine panel after cessation of mining operations for a period not to exceed thirty (30) years unless the board determines a longer period is necessary.

### **History.**

1971, ch. 206, § 3, p. 898; am. 1973, ch. 180, § 2, p. 415; am. 1974, ch. 17, § 35, p. 308; am. 2005, ch. 167, § 5, p. 509; am. 2019, ch. 226, § 4, p. 693.

## **STATUTORY NOTES**

### **Cross References.**

Department of lands, § 58-101.

State board of land commissioners, Idaho [Const.](#), [Art IX](#), [§ 7](#), and [§ 58-101 et seq.](#)

### **Amendments.**

The 2019 amendment, by ch. 226, added present subsections (10), (18), (29) and (30) and redesignated the remaining subsections accordingly; substituted “disturbed on the surface of mining operations” for “disturbed at the surface mining operation site” at the end of subsection (5); substituted “mining operations’ means the activities performed on the surface of a surface or underground mine” for “surface mining operations’ means the

activities performed on a surface mine” near the beginning of subsection (7); inserted “waste rock” in present subsection (11); in present subsection (12), inserted “or ‘waste rock’” near the beginning and inserted “or underground mine” near the end; substituted “or waste rock is placed or planned to be placed” for “is piled or planned to be piled” at the end of present subsection (13); inserted “or the surface effects of an underground mine” near the middle of present subsection (19); substituted “at a surface mine” for “during surface mining operations” at the end of present subsection (22); in present subsection (25), in the first sentence, inserted “or limited liability company” near the beginning and substituted “mining operations” for “surface mining” near the middle of the first sentence, and deleted “surface” preceding “mining or exploration” near the beginning of the last sentence; and, in present subsection (28), substituted “the surface of mining operation” for “a surface mine” near the beginning and inserted “or underground” near the end.

## **RESEARCH REFERENCES**

**ALR.** — What constitutes reasonably necessary use of the surface of the leasehold by a mineral owner, lessee, or driller under an oil and gas lease or drilling contract. [53 A.L.R.3d 16](#).

**§ 47-1504. Board of land commissioners — Responsibility.** — The state board of land commissioners is charged with the responsibility of administering this act in accordance with the purpose of the act and the intent of the legislature. The director of the department of lands shall, upon authorization of the board, exercise the powers and discharge the duties vested in the board by this act.

**History.**

1971, ch. 206, § 4, p. 898; am. 1974, ch. 17, § 36, p. 308.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Compiler's Notes.**

The terms “this act” and “the act” refer to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.



**§ 47-1505. Duties and powers of board.** — In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To administer and enforce the provisions of this chapter and the rules and orders promulgated thereunder as provided in this chapter.

(2) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this chapter. In carrying out the activities authorized by this section, the board may enter into contracts with and make grants to institutions, agencies, organizations and individuals and shall collect and make available any information obtained therefrom.

(3) To adopt and promulgate reasonable rules respecting the administration of this chapter and such rules as may be necessary to carry out the intent and purposes of this chapter, provided that no rules shall be adopted that require reclamation activities in addition to those set forth in this chapter. All such rules shall be adopted in accordance with and subject to the provisions of chapter 52, title 67, Idaho Code.

(4) To enter upon affected lands at all reasonable times, for the purpose of inspection, to determine whether the provisions of this chapter have been complied with. Such inspections shall be conducted in the presence of the operator or his duly authorized employees or representatives, and the operator shall make such persons available for the purpose of inspections.

(5) To reclaim affected land with respect to which financial assurance has been forfeited and, in the board's discretion, with the permission of the landowner, to reclaim such other land that becomes affected land.

(6) To complete closure activities with respect to a cyanidation facility for which a permanent closure financial assurance has been forfeited.

(7)(a) Upon receipt of a reclamation plan or permanent closure plan or amended or supplemental plan required by this chapter, the director shall notify the cities and counties in which the mining operation or cyanidation facility is proposed. The notice shall include the name and

address of the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations.

(b) Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of [section 47-1515, Idaho Code](#).

(c) No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or mining operations or a permanent closure plan in this state that conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to chapter 65, title 67, Idaho Code.

### **History.**

1971, ch. 206, § 5, p. 898; am. 1988, ch. 223, § 1, p. 424; am. 1993, ch. 216, § 46, p. 587; am. 1995, ch. 364, § 1, p. 1274; am. 2005, ch. 167, § 6, p. 509; am. 2019, ch. 226, § 5, p. 693.

## **STATUTORY NOTES**

### **Amendments.**

The 2019 amendment, by ch. 227, substituted “financial assurance” for “a bond” in subsection (5); substituted “financial assurance” for “bond” in subsection (6); in subsection (7), in the first sentence in paragraph (a), substituted “reclamation plan” for “proposed reclamation” near the beginning, inserted “required by this chapter” near the middle and deleted “surface” preceding “mining” near the end, and deleted “surface” following “exploration or” near the middle of the first sentence in paragraph (c).

**§ 47-1506. Operator — Duties prior to operation — Submission of maps and plans.** — (a) Any operator desiring to conduct mining operations within the state of Idaho for the purpose of immediate or ultimate sale of the minerals in either the natural or processed state shall submit to the board prior to commencing such mining operations a reclamation plan that contains the following:

(1) A map of the mine panel on which said operator desires to conduct mining operations, which sets forth with respect to said panel the following: (i) The location of existing roads and anticipated access and main haulage roads planned to be constructed in conducting the mining operations.

(ii) The approximate boundaries of the lands to be utilized in the process of mining operations.

(iii) The approximate location and, if known, the names of all streams, creeks, or bodies of water within the area where mining operations shall take place.

(iv) The name and address of the person to whom notices, orders, and other information required to be given to the operator pursuant to this chapter may be sent.

(v) The drainage adjacent to the area where the surface is being utilized by mining operations.

(vi) The approximate boundaries of the lands that will become affected lands as a result of mining operations during the year immediately following the date that a reclamation plan is approved as to said panel, together with the number of acres included within said boundaries.

(vii) A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.

(viii) A description of post-closure activities.

(2) Diagrams showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds on said panel.

(3) A description of the action which said operator intends to take to comply with the provisions of this chapter as to the mining operations conducted on such mine panel.

(b)(1) Any operator who is not required to submit an operating plan for a mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that mining operation. The operating plan shall include: (i) Maps showing the location of existing roads and anticipated access and main haulage roads planned to be constructed for mining operations.

(ii) The boundaries and acreage of the lands to be utilized in the process of mining operations.

(iii) Maps showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the mining operations.

(iv) The location and, if known, the names of all streams, creeks, or bodies of water within the area where mining operations shall take place.

(v) The drainage adjacent to the area where the surface is being utilized by mining operations.

(vi) The approximate boundaries and acreage of the lands that will become affected during the first year of construction of mining operations.

(2) The board shall promulgate rules or guidelines to allow the content of a nonfederal operating plan to be determined based upon the type and size of the mining operation.

(c) No operator who is required to submit an operating plan for a mining operation to an entity of the federal government shall be required to submit an operating plan to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government.

(d) No operator shall commence mining operations on any mine panel without first having a reclamation plan approved by the state board of land commissioners.

(e) Any operator desiring to conduct exploration operations within the state of Idaho using motorized earth-moving equipment in order to locate minerals for immediate or ultimate sale in either the natural or the processed state shall notify the board in writing prior to or as soon after beginning exploration operations as possible and in any event within seven (7) days after beginning exploration operations. The notice shall include the following: (1) The name and address of the operator;

(2) The location of the operation and the starting date and estimated completion date;

(3) The anticipated size of the operation, and the general method of operation.

The notice shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

(f) Any operator desiring to operate a cyanidation facility within the state of Idaho shall submit to the board prior to the operation of such a facility a permanent closure plan that contains the following: (1) The name and address of the operator;

(2) The location of the operation;

(3) The objectives, methods and procedures the operator will use to attain permanent closure;

(4) An estimate of the cost of attaining permanent closure as well as an estimate of the costs to achieve critical phases of the closure plan; (5) Any other information specified in the rules adopted to carry out the intent and purposes of this chapter; and (6) An operator may incorporate a description of post-closure activities in a permanent closure plan in lieu of inclusion in a reclamation plan.

(g) The board may require a reasonable fee for reviewing and approving a permanent closure plan or reclamation plan. The fee may include the reasonable cost to employ a qualified independent party, acceptable to the operator and the board, to verify the accuracy of the cost estimate required in subsection (f)(4) of this section and [section 47-1512\(c\), Idaho Code](#).

(h) The board shall coordinate its review of activities in a reclamation plan, operating plan, and permanent closure plan under statutory

responsibility of the department of environmental quality with that department, but that coordination shall not extend the time limit in which the board must act on a plan submitted.

(i) No operator shall commence operation of a cyanidation facility without first having a permanent closure plan approved by the board.

### **History.**

1971, ch. 206, § 6, p. 898; am. 1973, ch. 180, § 3, p. 415; am. 1990, ch. 213, § 65, p. 480; am. 1997, ch. 269, § 1, p. 772; am. 2005, ch. 167, § 7, p. 509; am. 2006, ch. 16, § 5, p. 42; am. 2015, ch. 141, § 122, p. 379; am. 2018, ch. 76, § 2, p. 171; am. 2019, ch. 226, § 6, p. 693.

## **STATUTORY NOTES**

### **Cross References.**

Department of environmental quality, § 39-104.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

### **Amendments.**

The 2006 amendment, by ch. 16, substituted “subsection (f)(4)” for “subsection (f)(3)” near the end of subsection (g).

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in paragraph (e)(3).

The 2018 amendment, by ch. 76, redesignated the former introductory paragraph of subsection (b) and paragraphs (b)(1) through (b)(7) as present paragraphs (b)(1) through (b)(2); in subsection (e), in the introductory paragraph, substituted “in writing prior to or” for “by certified mail” in the first sentence, and substituted “The notice” for “The letter” in the last sentence and in the paragraph following paragraph (e)(3).

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” and “mining operation” throughout the section; rewrote paragraphs (1)(vii) and (1)(viii), which formerly read: “(vii) A description of foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices that will be

used to control such nonpoint source impacts. (viii) A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices that will be used to mitigate the impacts, if any, from such acid rock drainage”; added paragraph (f)(6); in subsection (g), added “or reclamation plan” at the end of the first sentence, and added “and [section 47-1512\(c\), Idaho Code](#)” at the end of the last sentence; and substituted “a reclamation plan, operating plan, and permanent closure plan” for “the permanent closure plan” in subsection (h).

## **RESEARCH REFERENCES**

**ALR.** — Grant, reservation, or lease of minerals and mining rights as including, without expressly so providing, the right to remove the minerals. [70 A.L.R.3d 383](#).

**§ 47-1507. Plan — Approval or rejection by board — Hearing.** — (a) Upon determination by the board that a reclamation or permanent closure plan or any amended plan submitted by an operator meets the requirements of this chapter, the board shall deliver to the operator, in writing, a notice of approval of such plan, and thereafter said plan shall govern and determine the nature and extent of the obligations of the operator for compliance with this chapter, with respect to the mine panel or cyanidation facility for which the plan was submitted.

(b) If the board determines that a reclamation or permanent closure plan or amended plan fails to fulfill the requirements of this chapter, it shall deliver to the operator, in writing, a notice of rejection of the plan and shall set forth in said notice of rejection the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the plan fails to fulfill said requirements, and the requirements necessary to comply with this chapter. Upon receipt of said notice of rejection, said operator may submit amended plans. Upon further determination by the board that the amended plan still does not fulfill the requirements of said section, it shall deliver to the operator, in writing, a notice of rejection of the amended plan in the same form as set out in this section.

(c) Weather permitting, the board shall deliver to the operator within sixty (60) days after the receipt of any reclamation plan or amended reclamation plan, or within one hundred eighty (180) days after the receipt of any permanent closure plan or amended permanent closure plan, the notice of rejection or notice of approval of said plan, as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this chapter, and the operator may commence and conduct his mining operations on the mine panel or operate the cyanidation facility covered by such plan as if a notice of approval of said plan had been received from the board; provided, however, that if weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.



(d) For the purpose of determining whether a proposed plan or amended or supplemental plan complies with the requirements of this chapter, the board may, in its discretion, call for a public hearing. The hearing shall be held under such rules as promulgated by the board. Any interested person may appear at the hearing and give testimony. At the discretion of the board, the director may conduct the hearing and transmit a summary thereof to the board. Any hearing held shall not extend the period of time limit in which the board must act on a plan submitted.

**History.**

1971, ch. 206, § 7, p. 898; am. 1997, ch. 269, § 2, p. 772; am. 2005, ch. 167, § 8, p. 509; am. 2019, ch. 226, § 7, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” near the middle of subsection (c).

**RESEARCH REFERENCES**

**ALR.** — Duty of oil or gas lessee to restore surface of leased premises upon termination of operation. [62 A.L.R.4th 1153](#).

**§ 47-1508. Amended plan — Supplemental plan — Submission. —**

(a) In the event that a material change in circumstances arises that the operator, or the board, believes requires a change in an approved plan, including any amended plan, then the operator shall submit to the board a supplemental plan setting forth the proposed changes and the board shall likewise set forth its proposed changes and state the reasons therefor. Upon determination by the board that a supplemental plan or any amended supplemental plan submitted by the operator meets the requirements of this chapter, it shall deliver to the operator, in writing, a notice of approval of said supplemental plan, and thereafter said supplemental plan shall govern and determine the nature and extent of the obligations of the operator for compliance with respect to the mine plan or cyanidation facility for which the plan was submitted.

(b) If the board determines that a supplemental plan fails to fulfill the requirements of this chapter, it shall deliver to the operator, in writing, a notice of rejection of the supplemental plan and shall set forth in said notice of rejection the manner in which said plan fails to fulfill said requirements and shall stipulate the corrective requirements necessary to comply with said sections. Upon receipt of said notice of rejection, the operator may submit amended supplemental plans. Upon further determination by the board that an amended supplemental plan does not fulfill the requirements of said sections, it shall deliver to the operator, in writing, a notice of rejection of amended supplemental plan and shall set forth in said notice of rejection the manner in which such amended supplemental plan fails to fulfill said requirements and shall stipulate the requirements necessary to comply with said sections.

(c) The board shall, weather permitting, deliver to the operator within sixty (60) days after the receipt of any supplemental reclamation plan or amended supplemental reclamation plan, or within one hundred eighty (180) days after the receipt of any supplemental permanent closure plan or amended supplemental permanent closure plan, the notice of rejection, setting forth in detail the reasons for such rejection and the factual findings upon which such rejection is based or notice of approval of said plan, as the case may be, provided, however, that if the board fails to deliver a notice of

approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this chapter and the operator may commence and conduct or continue, as the case may be, his mining operations or operate the cyanidation facility as if a notice of approval of said plan had been received from the board. If weather conditions prevent the board from inspecting the mine panel or cyanidation facility to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) If an operator determines that unforeseen events or unexpected conditions require immediate changes in or additions to an approved reclamation or permanent closure plan, the operator may continue operations in accordance with the procedures dictated by the changed conditions, pending submission and approval of a supplemental plan, even though such operations do not comply with the approved plan, provided, however, that nothing herein stated shall be construed to excuse the operator from complying with the reclamation requirements of sections 47-1509 and 47-1510, Idaho Code, or from the applicable closure requirements of a permit issued under [section 39-118A, Idaho Code](#). Notice of such unforeseen events or unexpected conditions shall be given to the board within ten (10) days after discovery thereof, and a proposed supplemental plan shall be submitted within thirty (30) days after discovery thereof.

(e) At least once every five (5) years, the board shall review reclamation plans and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code, when there is a material change in the reclamation plan. As part of this review, the board shall revise the amount, terms, and conditions of any financial assurance when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to [section 47-1512, Idaho Code](#). Any such revision shall apply only to the affected lands covered by the material change.

(f) For a permanent closure plan approved by the board after July 1, 2005, the board shall periodically review, and revise if necessary to meet the requirements of this chapter, the amount, terms, and conditions of any financial assurance when there is a material change in the permanent closure plan or a material change in the estimated reasonable costs of

permanent closure determined pursuant to [section 47-1512, Idaho Code](#). The board may require a fee sufficient to employ a qualified independent party, acceptable to the operator and the board, to verify any revised estimate of the reasonable costs of permanent closure.

(g) Amendments and revisions are subject to the fee requirements in [section 47-1506\(g\), Idaho Code](#).

(h) Any determination by the board under this section shall be considered a final order pursuant to [section 47-1514, Idaho Code](#).

**History.**

1971, ch. 206, § 8, p. 898; am. 1997, ch. 269, § 3, p. 772; am. 2005, ch. 167, § 9, p. 509; am. 2019, ch. 226, § 8, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” near the end of the first sentence in subsection (c); and added subsections (e) through (h).

**§ 47-1509. Procedures in reclamation.** — (a) Except as otherwise provided in this act, every operator who conducts exploration or mining operations that disturb two (2) or more acres within the state of Idaho shall perform the following reclamation activities:

- (1) Ridges of overburden shall be leveled in such manner as to have a minimum width of ten (10) feet at the top.
- (2) Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top.
- (3) Overburden piles shall be reasonably prepared to control erosion.
- (4) Manage water as necessary to meet the requirements authorized under chapter 1, title 39, Idaho Code.
- (5) Roads that are abandoned shall be cross-ditched insofar as necessary to avoid erosion gullies.
- (6) Exploration drill holes shall be plugged or otherwise left so as to eliminate hazards to humans or animals.
- (7) Abandoned affected lands shall be topped to the extent that such overburden is reasonably available from the pit, with that type of overburden conducive to the control of erosion or the growth of the vegetation that the operator elects to plant thereon.
- (8) The operator shall conduct revegetation activities on the mined areas, overburden piles, and abandoned roads in accordance with the provisions of this act.
- (9) Tailings ponds shall be reasonably prepared in such a condition that they will not constitute a hazard to human or animal life.
- (10) Complete all other reclamation required in the approved reclamation plan.

(b) The board may request, in writing, that a given road or portion thereof not be cross-ditched or revegetated and, upon such request, the operator shall be excused from performing such activities as to such road or portion thereof.

(c) Every operator who conducts exploration or mining operations that disturb less than two (2) acres within the state of Idaho shall, wherever possible, contour the lands so disturbed to approximate the previous contour of the lands.

(d) The operator and board may agree, in writing, to do any act with respect to reclamation above and beyond the requirements herein set forth.

### **History.**

1971, ch. 206, § 9, p. 898; am. 1973, ch. 180, § 4, p. 415; am. 2016, ch. 22, § 1, p. 28; am. 2019, ch. 226, § 9, p. 693.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 22, deleted “or the conditions of the water run-off prior to commencing surface mining or exploration operations, whichever is the lesser standard” from the end paragraph (a)(4).

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” throughout the section; in subsection (a), substituted “Manage water” for “Where water run-off from affected lands results in stream or lake siltation in excess of that which normally results from run-off, the operator shall prepare affected lands and adjacent premises under the control of the operator” at the beginning of paragraph (4), and added paragraph (10).

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph in subsection (a) and at the end of paragraph (a)(8) refers to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.

**§ 47-1510. Vegetation planting.** — (a) Except as otherwise provided in this act, an operator shall plant, on affected lands, vegetation species that can be expected to result in vegetation comparable to the vegetation that was growing on the area occupied by the affected lands prior to the exploration and mining operations.

(b) No planting shall be required on any affected lands, or portions thereof, where planting would not be practicable or reasonable because the soil is composed of sand, gravel, shale, stone or other material to such an extent as to prohibit plant growth.

(c) No planting shall be required to be made with respect to any of the following: (1) On any mined area or overburden pile proposed to be used in the mining operations for haulage roads, as long as such roads are not abandoned.

(2) On any mined area or overburden pile where lakes are formed by rainfall or drainage runoff from the adjoining lands.

(3) On any mineral stockpile.

(4) On any exploration trench that will become a part of any pit or overburden disposal area.

(5) On any road that the operator intends to use in his mining operations, as long as said road has not been abandoned.

**History.**

1971, ch. 206, § 10, p. 898; am. 2019, ch. 226, § 10, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” near the end of subsection (a).

**Compiler’s Notes.**

The term “this act” in subsection (a) refers to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.



**§ 47-1511. Reclamation activities — Time limitations.** — (a) All reclamation activities required to be conducted under this act shall be performed in a good and workmanlike manner, with all reasonable diligence, and as to a given exploration drill hole, road or trench, within one (1) year after abandonment thereof.

(b) The reclamation activity as to a given mine panel shall be commenced within one (1) year after mining operations have permanently ceased as to such mine panel, provided, however, that in the event that during the course of mining operations on a given mine panel, the operator permanently ceases disposing of overburden on a given overburden pile, or permanently ceases removing minerals from a given pit, or permanently ceases using a given road or other affected land, then the reclamation activities to be conducted hereunder as to such pit, road, overburden pile, or other affected land shall be commenced within one (1) year after such termination, despite the fact that all operations as to the mine panel, which includes such pit, road, overburden pile, or other affected land, have not permanently ceased. It shall be presumed that the operator has permanently ceased mining operations as to a given affected land if no substantial amount of overburden has been placed on the overburden pile in question or if no minerals have been removed from the pit in question, as the case may be, for a period of three (3) years.

This presumption may be rebutted by evidencing, in writing, to the board what mining operations the operator has planned on the pit, road, overburden pile, or other affected land not used within a three (3) year period. Should the board determine that the operator, in good faith, intends to continue the mining operation within a reasonable period of time, it shall, in writing, so notify the operator. Should the board determine that the operation will not be continued within a reasonable period of time, the board shall proceed as though the mining operation has been abandoned.

### **History.**

1971, ch. 206, § 11, p. 898; am. 2019, ch. 226, § 11, p. 693.

### **STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining operations” and “mining operation” throughout the section.

**Compiler’s Notes.**

The term “this act” in subsection (a) refers to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.

**CASE NOTES****Trespassers on Mining Lands.**

Since the Idaho Surface Mining Act (§ 47-1501 et seq.) provides no affirmative duty to protect trespassers on mining lands, and it applies only after abandonment of the mine, the act created no duty of care in favor of the plaintiff, a trespasser, who was injured when he fell over the edge of a sandpit. *Cooper v. Unimin Corp.*, 639 F. Supp. 1208 (D. Idaho 1986).

**§ 47-1512. Financial assurance — Requisites.** — (a) Prior to conducting any mining operations on a mine panel covered by an approved reclamation plan or operating a cyanidation facility covered by an approved permanent closure plan, an operator shall submit to the board financial assurance meeting the requirements of this section.

(1) The initial reclamation financial assurance filed prior to conducting any mining operations on a mine panel shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required in this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year designated by the operator pursuant to [section 47-1506\(a\)\(1\)\(vi\), Idaho Code](#), and subsection (b) of this section.

(2) The initial permanent closure financial assurance filed prior to operating a cyanidation facility shall be in an amount determined by the board to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in this chapter, in the event of the failure of an operator to complete those activities. In setting such amount, the board shall avoid duplication with financial assurance deposited with other governmental agencies.

(3) The determination of the financial assurance amount shall constitute a final order subject to judicial review as set forth in subsection (a) of [section 47-1514, Idaho Code](#). In lieu of any financial assurance required hereunder, the operator may deposit cash and governmental securities with the board, in an amount equal to that of the required financial assurance, on the conditions as prescribed in this section.

(b) Prior to the time that lands designated to become affected lands on a mine panel, in addition to those designated pursuant to [section 47-1506\(a\)\(1\)\(vi\), Idaho Code](#), become affected land, the operator shall submit to the board financial assurance meeting the requirements of [section 47-1512\(c\), Idaho Code](#), which shall be in the amount necessary to ensure the performance of the duties of the operator under this chapter as to such affected lands actually proposed to be mined within the next calendar year. If additional acreage is subsequently proposed to be mined by an operator,

financial assurance shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required by this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year.

(c) For mining operations with affected land greater than five (5) acres, the financial assurance amount shall be based on the estimated reasonable costs of completing reclamation required in this chapter using standard estimating techniques, including indirect costs, developed by the board. For all other mining operations, the financial assurance for reclamation submitted pursuant to this chapter shall not exceed fifteen thousand dollars (\$15,000) for any given acre of such affected land. The board may require financial assurance in excess of fifteen thousand dollars (\$15,000) for any given acre of affected land only when the following conditions have been met:

(1) The board has determined that such financial assurance is necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed financial assurance. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall, at the discretion of the director, extend the time, up to thirty (30) days, in which the board must act on a plan submitted.

(d) For a cyanidation facility with affected land greater than five (5) acres, the financial assurance amount shall be based on the estimated reasonable costs to complete reclamation required under this chapter using standard estimating techniques, including indirect costs, developed by the board. For all other cyanidation facilities, the financial assurance submitted for permanent closure of a cyanidation facility pursuant to this chapter shall not exceed five million dollars (\$5,000,000). The board may require financial assurance in excess of five million dollars (\$5,000,000) for a cyanidation facility only when the following conditions have been met:

(1) The board has determined that such financial assurance is necessary to meet the requirements of this chapter.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed financial assurance. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall, at the discretion of the director, extend the time, up to sixty (60) days, in which the board must act on the permanent closure plan submitted.

(e) Any financial assurance required under this chapter to be filed and maintained with the board shall be in such form as the board prescribes, payable to the state of Idaho, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the board in effect as of the date of approval of the plan in accordance with the provisions of this chapter. Further, any financial assurance provided to another governmental agency that also meets the requirements in this section shall be deemed to be sufficient for the purposes of this chapter.

(f) Financial assurance filed as prescribed in this section shall not be canceled, except after not less than ninety (90) days' notice to the board. Upon failure of the operator to make substitution of financial assurance prior to the effective date of cancellation of the financial assurance or within thirty (30) days following notice of cancellation by the board, whichever is later, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations covered by such financial assurance until such substitution has been made.

(g) If the license to do business in this state of any surety, upon a bond filed with the board pursuant to this chapter, shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the board, shall substitute for such surety alternative financial assurance in accordance with this section. Upon failure of the operator to make substitution of financial assurance, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from

conducting operations covered by such financial assurance until such substitution has been made.

(h) When an operator shall have completed all or a portion of reclamation requirements, or all or a portion of any post-closure activity, under the provisions of this chapter as to any portion of affected land or any post-closure activity, he may notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the reclamation or post-closure activity performed meets the requirements of the reclamation plan pertaining to the land in question.

(1) Upon the determination by the board that the requirements of the reclamation plan in question have been substantially met as to said lands or such activity, the amount of financial assurance in effect as to such lands or such activity shall be reduced by an amount designated by the board to reflect the reclamation done.

(2) Upon a determination by the board that the requirements of the reclamation plan in question have not been substantially met as to said lands or such activity, it shall deliver to the operator, in writing, a notice of rejection of the request for financial assurance release and shall set forth in said notice the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the reclamation fails to fulfill the requirements of the reclamation plan, and the changes necessary to comply with the requirements of the reclamation plan.

(i) When an operator shall have completed an activity specified in an approved permanent closure plan, he may notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the activity performed meets the requirements of the permanent closure plan. In determining whether or not an activity under the statutory responsibility of the department of environmental quality meets the requirements of the permanent closure plan, the board shall consult with that department.

(1) Upon the determination by the board that the activity meets the requirements of the permanent closure plan, the financial assurance for permanent closure shall be reduced by an amount designated by the board to reflect the activity completed.

(2) Upon a determination by the board that the requirements of the permanent closure plan in question have not been met as to said lands, it shall deliver to the operator, in writing, a notice of rejection of the request for financial assurance release and shall set forth in said notice the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the activity fails to fulfill the requirements of the permanent closure plan, and the changes necessary to comply with the requirements of the permanent closure plan.

(j) An operator may withdraw any land previously designated as affected land within a mine panel, provided that it is not already affected land, and in such event, he shall notify the board, and the amount of the bond in effect as to the lands in that mine panel shall be reduced by an amount designated by the board as the amount which would have been necessary to reclaim such lands.

(k) Proof of financial assurance may be demonstrated by surety bond, corporate guarantee, letter of credit, certificate of deposit, trust fund, and any combination thereof or any other proof of financial assurance approved by the board.

(l) An operator may provide proof of financial assurance by use of a trust fund, provided the following conditions are met:

- (1) The trust fund is managed by a third-party trustee;
- (2) The trust fund names the state of Idaho as beneficiary; and
- (3) The trust is initially funded in an amount at least equal to:
  - (i) The financial assurance amount as estimated by this section;
  - (ii) A specified schedule of payments into the fund; or
  - (iii) A pro-rata amount if used with another financial assurance mechanism.
- (4) The trustee shall invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities.
- (5) The operator enters into a memorandum of agreement with the board that identifies the trustee, a range of investments, initial funding, schedule

of payments, and expected rate of return.

(6) The trust fund balance shall be reviewed by the board at a period not to exceed once every five (5) years and adjustments to the trust fund made to meet the conditions of the agreement and this chapter.

(m) Following the permanent cessation of a mining operation, the board may determine that a post-closure period of greater than thirty (30) years is necessary only when the following conditions have been met:

(1) The board has determined that such longer post-closure period is necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code;

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes a longer post-closure period is necessary;

(3) The board has conducted a hearing where the operator is allowed to give testimony concerning the length of the post-closure period. The hearing shall be held under such rules as promulgated by the board. The requirement for a hearing may be waived by the operator; and

(4) Any decision by the board under this subsection shall be considered a final order pursuant to [section 47-1514, Idaho Code](#).

(n) Any mining operation that is addressing water management, and any releases to the environment through a comprehensive environmental response, compensation and liability act (CERCLA) order, including any required financial assurance, shall not be required to submit financial assurance to the board for any activities covered by a CERCLA order.

### **History.**

1971, ch. 206, § 12, p. 898; am. 1980, ch. 206, § 1, p. 471; am. 1985, ch. 123, § 1, p. 304; am. 1988, ch. 223, § 2, p. 424; am. 1997, ch. 269, § 4, p. 772; am. 2005, ch. 167, § 10, p. 509; am. 2016, ch. 22, § 2, p. 28; am. 2019, ch. 226, § 12, p. 693.

## **STATUTORY NOTES**

### **Cross References.**

Department of environmental quality, § 39-104.



**Amendments.**

The 2016 amendment, by ch. 22, substituted “fifteen thousand dollars (\$15,000)” for “two thousand five hundred dollars (\$2,500)” twice in the introductory paragraph of subsection (c) and added a paragraph (2) in both subsections (h) and (i), designating the existing prior provisions as paragraph (1).

The 2019 amendment, by ch. 226, rewrote the section to the extent that a detailed comparison is impracticable.

**Federal References.**

The comprehensive environmental response, compensation and liability act, referred to in subsection (n), is codified as [42 USCS § 9601 et seq.](#)

**§ 47-1513. Operator's failure to comply — Forfeiture of financial assurance — Penalties — Reclamation fund — Cyanidation closure fund.** — (a) Whenever the board determines that an operator has not complied with the provisions of this chapter, the board may notify the operator of such noncompliance and may, by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of environmental quality prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation a formal complaint that shall specify the provisions of this chapter that the operator allegedly is violating and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this chapter. Such complaint may be served by certified mail, and a return receipt signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation or permanent closure plan and forfeit the financial assurance in the amount necessary to reclaim affected lands or complete the permanent closure activities. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said hearing, enter an order in accordance with

chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the chapter.

(b) Upon request of the board, the attorney general shall institute proceedings to have the financial assurance of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such financial assurance shall fully satisfy all obligations of the operator to reclaim the affected land or complete permanent closure activities under the provisions of this chapter. If the violation involves an operator that has not furnished financial assurance required by this chapter, or an operator that is not required to furnish financial assurance pursuant to this chapter, or an operator who violates this chapter by performing an act not included in the original approved reclamation plan or the original approved permanent closure plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands or permanent closure of the cyanidation facility. Nothing in this subsection shall relieve the operator of any obligation, including the obligation to complete closure requirements, pursuant to a permit issued by the department of environmental quality under [section 39-118A, Idaho Code](#), or limit that department's authority to require compliance with such permit requirements.

(d) Notwithstanding any other provisions of this chapter, the board may commence an action without financial assurance or undertaking, in the name of the state of Idaho, to enjoin any operator who is conducting operations without an approved plan required by [section 47-1506, Idaho Code](#), or without the financial assurance required by this chapter. The court, or a judge thereof at chambers, if satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant,

his agents, and employees from conducting such operations without said plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, or to complete permanent closure activities, pending final disposition of the action. The action shall then proceed as in other cases for injunctions. If it is established at trial that the defendant has operated without an approved plan or financial assurance, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this chapter. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting mining or exploration operations or operating a cyanidation facility without the required plan or financial assurance, the cost of performing the reclamation activities required by sections 47-1509 and 47-1510, Idaho Code, or the cost of permanent closure activities from any such operator who has not provided financial assurance to cover the cost of the required activities.

(e) Notwithstanding any other provision of this chapter, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted mining operation or cyanidation facility when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state, and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this chapter or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the

name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides.

(1) All sums recovered related to the reclamation provisions of this chapter shall be placed in the state treasury and credited to the mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer the reclamation provisions of this chapter.

(2) All sums recovered related to the cyanidation facility closure provisions of this chapter shall be placed in the state treasury and credited to the cyanidation facility closure fund, which is hereby created. Moneys in the fund may be expended pursuant to appropriation and used to complete permanent closure activities and to administer the permanent closure provisions of this chapter.

(g) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or willfully fails, neglects, or refuses to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or imprisonment not to exceed one (1) year, or both.

(h) Reclamation plans approved by the board as of July 1, 2019, shall be deemed to be in full compliance with the requirements of this chapter.

### **History.**

1971, ch. 206, § 13, p. 898; am. 1973, ch. 180, § 5, p. 415; am. 1974, ch. 17, § 37, p. 308; am. 1985, ch. 123, § 2, p. 304; am. 1988, ch. 223, § 3, p. 424; am. 1993, ch. 216, § 47, p. 587; am. 1997, ch. 269, § 5, p. 772; am. 2001, ch. 103, § 88, p. 253; am. 2005, ch. 167, § 11, p. 509; am. 2005, ch. 341, § 2, p. 1006; am. 2006, ch. 37, § 1, p. 101; am. 2019, ch. 226, § 13, p. 693.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Board of environmental quality, § 39-107.

Department of environmental quality, § 39-104.

Director of department of lands, § 58-105.

### **Amendments.**

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 167, substituted “this chapter” for “this act” throughout the section; in subsection (a) inserted “or permanent closure” and “or complete the permanent closure activities” in the seventh sentence; in subsection (c), inserted “or complete permanent closure activities,” in the first sentence, inserted “or the original approved permanent closure plan” in the second sentence, and added the last sentence; in subsection (d), inserted “or to complete permanent closure activities” near the end of the second sentence and inserted “or operating a cyanidation facility” and “or the cost of permanent closure activities” in the last sentence; in subsection (e), inserted “or cyanidation facility” near the middle of the sentence; and added subsections (i) and (j).

The 2005 amendment, by ch. 341, added “cyanidation closure fund” at the end of the catchline, substituted “this chapter” for “this act” throughout the section and, in subsection (f), designated the former last sentence as paragraph (1) and added paragraphs (2) and (3).

The 2006 amendment, by ch. 37, deleted former subsection (f)(3) which read: “Any unencumbered and unexpended balances in the surface mining reclamation fund and the cyanidation facility closure fund remaining at the end of a fiscal year shall not lapse but shall be carried forward until expended or modified by subsequent statute”.

The 2019 amendment, by ch. 226, substituted “financial assurance” for “bond” in the section heading and throughout the section; deleted “surface” preceding “mining” in the last sentence of subsection (d) and near the middle of subsection (e); in subsection (h), substituted “July 1, 2019” for “January 1, 1997” in the first sentence, and deleted the last two sentences, which formerly read: “However, the board may periodically review, and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code, the amount, terms and conditions of any

bond when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to [section 47-1512, Idaho Code](#). Any revision to the amount, terms and conditions of a bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan”; and deleted subsections (i) and (j), which concerned approval of permits for cyanidation facilities and permanent closure plans for the facilities.

**§ 47-1514. Appeal from final order — Procedure.** — (a) Any operator dissatisfied with any final order of the board made pursuant to this chapter may, within sixty (60) days after notice of such order, obtain judicial review thereof by appealing to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or to the district court for the county in which the cyanidation facility or the land or any portions thereof affected by the order is located. Such appeal shall be perfected by filing with the clerk of such court, in duplicate, a notice of appeal, together with a complaint against the board, in duplicate, which shall recite the prior proceedings before the board or hearing officer, and shall state the grounds upon which the petitioner claims he is entitled to relief. A copy of the summons and complaint shall be delivered to the board or such person or persons as the board may designate to receive service of process. The clerk of the court shall immediately forward a copy of the notice of appeal and complaint to the board, which shall forthwith prepare, certify and file in said court, a true copy of any decision, findings of fact, conclusions or order, together with any pleadings upon which the case was heard and submitted to the board or hearing officer, and shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony of any proceedings in said matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits, including, but not limited to, the rights of appeal to the supreme court of the state of Idaho.

(b) When the board finds that justice so requires, it may postpone the effective date of a final order made, pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings.

(c) Notwithstanding any other provision of this chapter concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of this chapter, the board may file a civil action in the district court for the county wherein the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. The board may request the court to issue an



appropriate order to remedy the violation. The right of appeal to the supreme court of the state of Idaho shall be available.

**History.**

1971, ch. 206, § 14, p. 898; am. 1973, ch. 180, § 6, p. 415; am. 2005, ch. 167, § 12, p. 509.

**STATUTORY NOTES**

**Effective Dates.**

Section 7 of S.L. 1973, ch. 180, declared an emergency. Approved March 16, 1973.

**§ 47-1515. Information.** — Any information supplied by an operator to the board, the director, or the department of lands, and designated by such operator as confidential, shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

**History.**

1971, ch. 206, § 15, p. 898; am. 1974, ch. 17, § 38, p. 308; am. 1990, ch. 213, § 66, p. 480; am. 2015, ch. 141, § 123, p. 379.

**STATUTORY NOTES**

**Cross References.**

Department of lands, § 58-101 et seq.

**Amendments.**

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9”.

**Effective Dates.**

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**§ 47-1516. Deposit of forfeitures and damages.** — All forfeitures and civil damages collected under the provisions of this act shall be deposited with the state treasurer in a special fund to be used by the board for mined land reclamation purposes.

**History.**

1971, ch. 206, § 16, p. 898; am. 2019, ch. 226, § 14, p. 693.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mined” near the end of the section.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1971, Chapter 206, which is compiled as §§ 47-1501 to 47-1518.

**§ 47-1517. Conduct of activities.** — (a) An operator shall conduct all exploration and mining operations in accordance with all applicable statutes and regulations pertaining to water use and mining safety applicable to exploration and mining operations.

(b) An operator desiring to operate a cyanidation facility within the state of Idaho shall conduct all related activities in accordance with all applicable statutes and rules related to cyanidation including, but not limited to, [section 39-118A, Idaho Code](#).

**History.**

1971, ch. 206, § 17, p. 898; am. 2005, ch. 167, § 13, p. 509; am. 2019, ch. 226, § 15, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, deleted “surface” preceding “mining” near the end of subsection (a).

**Compiler’s Notes.**

Section 18 of S.L. 1971, ch. 206 provided: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

**§ 47-1518. Effective date — Application of chapter.** — (a) The reclamation provisions of this chapter shall be in full force and effect on and after May 31, 1971. A surface mine operator shall not be required to perform the reclamation activities referred to in this chapter as to any surface mining operations performed prior to May 31, 1972, and, further, shall not be required to perform such reclamation activities as to any pit or overburden pile as it exists prior to May 31, 1972.

(b) The cyanidation provisions of this chapter shall be in full force and effect on and after July 1, 2005. A cyanidation facility with an existing permit approved by the department of environmental quality under [section 39-118A, Idaho Code](#), as of July 1, 2005, shall be deemed to be in full compliance with the requirements of this chapter. If there is a material modification or a material expansion of a cyanidation facility after July 1, 2005, the provisions of this chapter shall apply to the modification or expansion. Provided however, that reclamation or closure-related activities at a facility with an existing cyanidation permit that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(c) An underground mine operator shall not be subject to this chapter for affected land disturbed by underground mine operations prior to July 1, 2019. If there is a significant change to affected land at an underground mining operation after July 1, 2019, the provisions of this chapter shall apply to the significant change.

(d) The financial assurance and post-closure provisions of this chapter amended in 2019 shall be in force and effect on or after July 1, 2019. Provided that the financial assurance and post-closure provisions of this chapter amended in 2019 shall not apply to:

- (1) Mining operations currently permitted or authorized to commence operations prior to July 1, 2019; or
- (2) Any mining operation that has permanently ceased operations prior to July 1, 2019.

(e) For mining operations that have submitted maps and plans to state or federal agencies as required by [section 47-1506, Idaho Code](#), but such operations have not been approved prior to July 1, 2019, such operations shall have one (1) year after operation approval to submit plans and financial assurance required by the financial assurance and post-closure provisions of this chapter as amended in 2019.

(f) The board shall promulgate temporary rules by August 1, 2019, to implement the 2019 amendments to this chapter.

**History.**

1971, ch. 206, § 19, p. 898; am. 2005, ch. 167, § 14, p. 509; am. 2019, ch. 226, § 16, p. 693.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 226, rewrote the section, which formerly read: “The reclamation provisions of this chapter shall be in full force and effect on and after May 31, 1971. An operator shall not be required to perform the reclamation activities referred to in this chapter as to any surface mining operations performed prior to May 31, 1972, and further, shall not be required to perform such reclamation activities as to any pit or overburden pile as it exists prior to May 31, 1972. The cyanidation provisions of this chapter shall be in full force and effect on and after July 1, 2005. The board shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act.”

**§ 47-1519. Application of chapter to mineral extraction for public highway purposes.** — Notwithstanding any other provision of law to the contrary, the bonding provisions of this chapter shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. Surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway which disturb two (2) or more acres shall comply with the provisions of [section 47-1506, Idaho Code](#), as though all minerals were mined for the purpose of immediate or ultimate sale. Surface mining operations conducted by a public or governmental agency for maintenance, repair or construction of a public highway which disturb less than two (2) acres are exempt from the provisions of [section 47-1506, Idaho Code](#). The extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway shall not be deemed surface mining operations under this chapter, provided that the affected land is an integral part of the public highway.

**History.**

[I.C., § 47-1519](#), as added by 1991, ch. 299, § 1, p. 786.





## Chapter 16

### GEOHERMAL RESOURCES

Sec.

47-1601. Geothermal resources — Land leases — Authorization.

47-1602. “Geothermal resources” defined.

47-1603. Rules and regulations.

47-1604. Leased area.

47-1605. Leases — Rental and royalty.

47-1606. Leases — Purposes for which land used.

47-1607. Leases — Assignment or transfer — Restrictions.

47-1608. Bonding.

47-1609. Leases — Cancellation.

47-1610. Constitutional requirements — Compliance.

47-1611. Cooperative agreements and modification of leases authorization.

**§ 47-1601. Geothermal resources — Land leases — Authorization. —**

The state board of land commissioners is hereby authorized and empowered to issue geothermal resource leases for terms of up to forty-nine (49) years on any state or school lands which may contain geothermal resources, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, drilling or other well construction for, and production of geothermal resources.

**History.**

I.C., § 47-1601, as added by 1972, ch. 182, § 1, p. 467; am. 2011, ch. 61, § 1, p. 137.

**STATUTORY NOTES**

**Cross References.**

Geothermal resources act, § 42-4001 et seq.

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**Amendments.**

The 2011 amendment, by ch. 61, substituted “issue geothermal resource leases for terms of up to forty-nine (49) years on any state” for “lease for a term of ten (10) years, and as long thereafter as geothermal resources are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct geothermal resource well drilling or construction operations, thereon, or for such lesser term as it finds to be in the public interest, any state.”

**§ 47-1602. “Geothermal resources” defined.** — For the purposes of this chapter, “geothermal resources” shall mean the natural heat energy of the earth, the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource, but they are also found and hereby declared to be closely related to and possibly affecting and affected by water resources in many instances. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands, including but not limited to, mineral leases and leases issued under chapter 8, title 47, Idaho Code.

**History.**

I.C., § 47-1602, as added by 1972, ch. 182, § 1, p. 467.

**§ 47-1603. Rules and regulations.** — The state board of land commissioners is hereby authorized and empowered to adopt such rules and regulations governing the issuance of geothermal resource leases and governing the conduct of any operations thereunder.

**History.**

I.C., § 47-1603, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**§ 47-1604. Leased area.** — The surface area covered by a geothermal lease issued pursuant to this chapter shall be determined by the state board of land commissioners.

**History.**

I.C., § 47-1604, as added by 1972, ch. 182, § 1, p. 467; am. 2011, ch. 63, § 1, p. 138.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**Amendments.**

The 2011 amendment, by ch. 63, rewrote the section, which formerly read: “No single geothermal resource lease issued under this chapter shall be for an area exceeding one (1) section, provided that any one (1) person may hold more than one lease.”

**§ 47-1605. Leases — Rental and royalty.** — (1) Geothermal resources leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance. The rental specified in geothermal leases shall be fixed in any manner by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas.

(2) Royalty shall be established by the board of land commissioners based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases shall be fixed in any manner by the state board of land commissioners including, but not limited to, competitive bidding, negotiation, fixed amounts or formulas. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners.

### **History.**

**I.C., § 47-1605**, as added by 1972, ch. 182, § 1, p. 467; am. 1985, ch. 124, § 1, p. 308; am. 2011, ch. 62, § 1, p. 137.

## **STATUTORY NOTES**

### **Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

### **Amendments.**

The 2011 amendment, by ch. 62, rewrote this section, which formerly read: “Geothermal resources leases shall be issued at an annual rental of not less than twenty-five cents (25¢) per acre, payable in advance and a royalty which shall not be less than ten per centum (10%) of the geothermal resources produced from the lands under lease or the value thereof. The rentals and the royalties specified in geothermal leases shall be fixed in any manner, including but not limited to competitive bidding, or according to any formula as the state board of land commissioners finds will maximize

public benefits from such leases. Royalties shall be paid in addition to rental payments, at the discretion of the board of land commissioners.”

**§ 47-1606. Leases — Purposes for which land used.** — The state board of land commissioners shall have the right to lease state or school lands for grazing, agricultural, or other purposes, as may be otherwise provided by law, and to issue geothermal resource leases covering lands leased for grazing, agricultural, or other purposes, provided however, that the lessee under a geothermal resource lease issued under the provisions of this chapter shall have paramount right to the use of so much of the surface of the land as shall be necessary for the purposes of his lease and shall have the right to ingress and egress at all times during the term of such lease.

**History.**

I.C., § 47-1606, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.



**§ 47-1607. Leases — Assignment or transfer — Restrictions.** — No geothermal resource lease, which shall be issued under the provisions of this chapter, shall be assignable or transferable except upon the written consent of the state board of land commissioners.

**History.**

I.C., § 47-1607, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**§ 47-1608. Bonding.** — The board shall require the execution of good and sufficient bonds in amounts the board determines reasonable for reclamation and all damages to the land surface and improvements thereon, whether or not the lands have been sold or leased for any other purpose. These bonds shall not duplicate bonds for well closure held by the Idaho department of water resources.

**History.**

I.C., § 47-1608, as added by 1972, ch. 182, § 1, p. 467; am. 1993, ch. 289, § 1, p. 1081; am. 2011, ch. 64, § 1, p. 138.

**STATUTORY NOTES**

**Cross References.**

Department of water resources, § 42-1701 et seq.

**Amendments.**

The 2011 amendment, by ch. 64, rewrote the section, which formerly read: “**Bond.** (1) The board shall require the execution of a good and sufficient bond in an amount the board determines reasonable, which shall not be less than one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the land surface and improvements thereon, whether or not the lands have been sold or leased for any other purpose.

“(2) Upon commencement of operations for the drilling of any geothermal resource well, the lessee shall be required by the board to furnish such a bond as the board determines reasonable which shall not be less than six thousand dollars (\$6,000) which bond shall be in lieu of the bond required in subsection (1) of this section and shall cover all subsequent operations on such lease.”

**§ 47-1609. Leases — Cancellation.** — The state board of land commissioners shall reserve and may exercise the authority to cancel any geothermal resource lease upon failure by the lessee to exercise due diligence or care in the prosecution of his operations in accordance with the terms and conditions stated in such lease and with all laws of the state of Idaho, and shall insert in every such lease appropriate provisions for its cancellation by the board in the event of noncompliance upon the part of the lessee.

**History.**

I.C., § 47-1609, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**§ 47-1610. Constitutional requirements — Compliance.** — All grants and permissions under this act shall be executed as required by the Constitution of the state of Idaho, Article IV, section 16.

**History.**

I.C., § 47-1610, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1972, Chapter 182, which is compiled as §§ 47-1601 to 47-1611.

**§ 47-1611. Cooperative agreements and modification of leases authorization.** — The state board of land commissioners is a person authorized to join on behalf of the state of Idaho in agreements for cooperative or unit plans of development or operation of the geothermal resources of geothermal resource areas involving state or school lands and to do all things necessary to make operative such plan or plans subject to any and all provisions of state and federal law; and for such purposes the board is hereby authorized with the consent of its lessees to modify and change any and all terms of leases issued by it to facilitate efficiency and resource conservation in geothermal resource operations on and from lands under its jurisdiction; provided however, that said board shall not use or contract to use funds under its control for the purpose of drilling or otherwise paying the cost of geothermal resource operations.

**History.**

I.C., § 47-1611, as added by 1972, ch. 182, § 1, p. 467.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Effective Dates.**

Section 2 of S.L. 1972, ch. 182 declared an emergency. Approved March 17, 1972.



## Chapter 17

# IDAHO ABANDONED MINE RECLAMATION ACT

Sec.

47-1701. Purpose of act.

47-1702. Short title.

47-1703. Funding.

47-1704. Definitions.

47-1705. Responsibility of state board of land commissioners.

47-1706. Duties and powers of board.

47-1707. Priorities.

47-1708. Interagency coordination.

**§ 47-1701. Purpose of act.** — It is the purpose of this act to provide for the reclamation of abandoned mines on state and federal lands and on certain private lands, thereby protecting human health, safety and welfare, conserving natural resources, aiding in the protection of wildlife, aquatic resources, domestic animals, and reducing soil erosion.

**History.**

I.C., § 47-1701, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 3, p. 105.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1994, Chapter 220, which is compiled as §§ 47-1701 to 47-1708.



**§ 47-1702. Short title.** — This act may be known and cited as the “Idaho Abandoned Mine Reclamation Act.”

**History.**

**I.C., § 47-1702**, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 4, p. 105.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1994, Chapter 220, which is compiled as §§ 47-1701 to 47-1708.

**§ 47-1703. Funding.** — This chapter shall govern the use of state and federal moneys specifically appropriated for abandoned mine reclamation. This chapter shall not require the state to expend or appropriate state moneys. The board may receive federal funds, state funds, and any other funds, and, within the limits imposed by a specific grant, expend them as directed by this chapter. All grants, funds, fees, fines, penalties and other uncleared money which has been or will be paid to the state for abandoned mine reclamation shall be placed in the state treasury and credited to the abandoned mine reclamation fund, which is hereby created. This fund shall be available to the board, by legislative appropriation, and shall be expended for the reclamation of lands affected by eligible mining operations.

**History.**

I.C., § 47-1703, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 5, p. 105; am. 2006, ch. 37, § 2, p. 101.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 37, substituted “fund” for “account” in the third and fourth sentences, and deleted the former last sentence which read: “Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this chapter until expended or until modified by subsequent statute.”

**§ 47-1704. Definitions.** — (1) “Abandoned mine” means a mine deserted by the operator, having no regular maintenance, and not covered by a valid mining claim.

(2) “Affected land” means the land adjacent to an eligible mine that is, or may be, adversely affected by past mining operations.

(3) “Board” means the state board of land commissioners or such department, commission, or agency as may lawfully succeed to the powers and duties of such board.

(4) “Director” means the head of the department of lands or such officer as may lawfully succeed to the powers and duties of said director.

(5) “Eligible mine” means an abandoned mine located on land owned by the state or federal government or an abandoned mine located on private land when the owner of the private land has requested, and the board has granted, designation as an eligible mine.

(6) “Mine” means an area where valuable minerals were extracted from the earth and includes all associated development areas including, but not limited to, milling and processing areas, overburden disposal areas, stockpiles, roads, tailings ponds and other areas disturbed at the mining operation site.

(7) “Operator” means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial including, but not limited to, every public or governmental agency engaged in mining or mineral exploration operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any governmental agency with respect to those mining or mineral exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of this chapter.

(8) “Valuable mineral” shall have the same meaning as “valuable mineral” defined in [section 47-1205, Idaho Code](#).

**History.**

[I.C., § 47-1704](#), as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 6, p. 105.

**STATUTORY NOTES**

**Cross References.**

Department of lands, § 58-101 et seq.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**§ 47-1705. Responsibility of state board of land commissioners. —**  
The state board of land commissioners is charged with the responsibility of administering this act in accordance with the purpose of the act and the intent of the legislature. The director of the department of lands shall, upon authorization of the board, exercise the powers and discharge the duties vested in the board by this act.

**History.**

I.C., § 47-1705, as added by 1994, ch. 220, § 1, p. 702.

**STATUTORY NOTES**

**Cross References.**

Director of department of lands, § 58-105.

State board of land commissioners, Idaho [Const., Art IX, § 7](#), and [§ 58-101 et seq.](#)

**Compiler's Notes.**

The terms “this act” and “the act” refer to S.L. 1994, Chapter 220, which is compiled as §§ 47-1701 to 47-1708.

**§ 47-1706. Duties and powers of board.** — In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To reclaim any eligible mine and affected lands. Reclamation on federal lands shall be completed only upon consent of the federal agency responsible for the administration of those lands. Reclamation activities may include:

- (a) The reclamation and restoration of abandoned surface mined areas;
- (b) The reclamation of abandoned milling and processing areas;
- (c) The sealing, filling, and grading of abandoned deep mine entries;
- (d) The planting of land adversely affected by past mining to prevent erosion and sedimentation;
- (e) The prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage;
- (f) The control of surface subsidence due to abandoned deep mines; and
- (g) Such other reclamation activities as may be necessary to accomplish the purposes of this act.

(2) To administer and enforce the provisions of this act and the rules and orders promulgated thereunder as provided in this act.

(3) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this act. In carrying out the activities authorized in this section, the board may enter into contracts with and make grants to institutions, agencies, organizations and individuals, and shall collect and make available any information obtained therefrom.

(4) To adopt and promulgate reasonable rules respecting the administration of this act and such rules as may be necessary to carry out the intent and purposes of this act. All such rules shall be adopted in

accordance with and subject to the provisions of chapter 52, title 67, Idaho Code.

(5) To enter upon eligible mines and affected lands at reasonable times, for inspection purposes and to determine whether the provisions of this act are being complied with. Inspections on private lands shall be conducted in the presence of the landowner or his duly authorized employees or representatives, or with written permission of the landowner.

**History.**

I.C., § 47-1706, as added by 1994, ch. 220, § 1, p. 702.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" refers to S.L. 1994, Chapter 220, which is compiled as §§ 47-1701 to 47-1708.

**§ 47-1707. Priorities.** — Expenditure of funds from the abandoned mine reclamation account [abandoned mine reclamation fund] shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, and general welfare from the adverse effects of past mining practices.

(2) The restoration of land and water resources previously degraded by the adverse effects of past mining practices.

**History.**

**I.C., § 47-1707**, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 7, p. 105.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the introductory paragraph was added by the compiler to correct the name of the referenced fund. See § 47-1703.



**§ 47-1708. Interagency coordination.** — The board shall recognize other governmental, educational, and private organizations or agencies which have expertise and information regarding abandoned mines and affected lands. The board shall characterize, prioritize, and complete reclamation of eligible mines and affected lands in coordination with these agencies. In addition, the board may reasonably compensate them from the abandoned mine reclamation account [abandoned mine reclamation fund] for services that the board requests they provide.

**History.**

I.C., § 47-1708, as added by 1994, ch. 220, § 1, p. 702; am. 1999, ch. 44, § 8, p. 105.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to correct the name of the referenced fund. See § 47-1703.



## Chapter 18

### FINANCIAL ASSURANCE

Sec.

47-1801. Purpose.

47-1802. Applicability.

47-1803. Reclamation fund created — Financial assurance.

47-1804. Cost recovery.

47-1805. Operations not approved.

**§ 47-1801. Purpose.** — The purpose of this chapter is to provide an alternative form of performance bond or financial assurance for mining operations and mineral leases as required by the state board of land commissioners.

**History.**

I.C., § 47-1801, as added by 2002, ch. 153, § 1, p. 448.

**STATUTORY NOTES**

**Cross References.**

State board of land commissioners, Idaho **Const., Art IX, § 7**, and **§ 58-101 et seq.**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 153 declared an emergency. Approved March 20, 2002.

**§ 47-1802. Applicability.** — Mine operators who are working under the requirements of title 47, Idaho Code, may be required to provide alternative financial assurance, and if so required, shall provide such alternative financial assurance in accordance with the provisions of this chapter.

**History.**

I.C., § 47-1802, as added by 2002, ch. 153, § 1, p. 448.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 153 declared an emergency. Approved March 20, 2002.

**§ 47-1803. Reclamation fund created — Financial assurance. — (1)**

The state treasurer shall be the custodian of an interest-bearing, dedicated fund known as the “Reclamation Fund” which is hereby created. The reclamation fund shall be funded by payments from applicable parties, interest and cost recoveries initiated by the state board of land commissioners. All payments, interest and cost recoveries shall be established by the state board of land commissioners.

(2) An operator’s commitment to reclaim affected lands and operator’s payments to the reclamation fund shall be documented on a department of lands form requiring that the operator shall faithfully perform the requirements of the approved plan and comply with all administrative rules and policy governing the operation.

(3) Moneys accruing to or received by the fund shall be expended by the department of lands, after approval by the state board of land commissioners and upon legislative appropriation, for reclamation of mines subject to the provisions of this chapter. Moneys in excess of those needed for reclamation liabilities shall be utilized, after approval of the state board of land commissioners, for mine administration, abandoned mine land reclamation or educational purposes. The state board of land commissioners shall adopt policy to determine an appropriate minimum balance to be maintained in the reclamation fund for reclamation liabilities.

**History.**

I.C., § 47-1803, as added by 2002, ch. 153, § 1, p. 448.

**STATUTORY NOTES**

**Cross References.**

Department of lands, § 58-101 et seq.

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

State treasurer, § 67-1201 et seq.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 153 declared an emergency. Approved March 20, 2002.

**§ 47-1804. Cost recovery.** — If an operator fails to provide financial assurance as required by the provisions of this chapter, or has forfeited moneys from the reclamation fund and has not repaid those moneys, the state board of land commissioners shall be authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be liable for the actual cost of the required financial assurance, reclamation costs and administrative costs incurred by the department of lands.

**History.**

I.C., § 47-1804, as added by 2002, ch. 153, § 1, p. 448.

**STATUTORY NOTES**

**Cross References.**

Department of lands, § 58-101 et seq.

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**Effective Dates.**

Section 2 S.L. 2002, ch. 153 declared an emergency. Approved March 20, 2002.



**§ 47-1805. Operations not approved.** — The state board of land commissioners shall not approve any application for a reclamation plan, placer permit, mineral lease, or approve an amendment of any such document filed by a company, individual, corporate officer or operator who is not in compliance with applicable mining or leasing statutes or administrative rules, or who has forfeited reclamation funds and has not fully reimbursed the department of lands for the reclamation and administrative costs incurred by the state board of land commissioners, or who has not paid the required financial assurance.

**History.**

I.C., § 47-1805, as added by 2002, ch. 153, § 1, p. 448.

**STATUTORY NOTES**

**Cross References.**

Department of lands, § 58-101 et seq.

State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 153 declared an emergency. Approved March 20, 2002.

**Title 48**  
**MONOPOLIES AND TRADE PRACTICES**

Chapter

Chapter 1. Idaho Competition Act, §§ 48-101 — 48-119.

Chapter 2. Anti-Price Discrimination Act, §§ 48-201 — 48-206.

Chapter 3. Idaho Patient Act, §§ 48-301 — 48-312.

Chapter 4. Unfair Sales Act. [Repealed.]

Chapter 5. Registration and Protection of Trademarks, §§ 48-501 — 48-518.

Chapter 6. Consumer Protection Act, §§ 48-601 — 48-619.

Chapter 7. Shoplifting, §§ 48-701 — 48-705.

Chapter 8. Idaho Trade Secrets Act, §§ 48-801 — 48-807.

Chapter 9. New Motor Vehicle Warranties — Manufacturer's Duty to Repair, Refund or Replace, §§ 48-901 — 48-913.

Chapter 10. Idaho Telephone Solicitation Act, §§ 48-1001 — 48-1010.

Chapter 11. Idaho Pay-Per-Telephone Call Act, §§ 48-1101 — 48-1108.

Chapter 12. Idaho Charitable Solicitation Act, §§ 48-1201 — 48-1206.

Chapter 13. Music Licensing and Copyright Enforcement Act, §§ 48-1301 — 48-1308.

Chapter 14. Assistive Technology Warranty Act, §§ 48-1401 — 48-1407.

Chapter 15. Idaho Nonprofit Hospital Sale or Conversion Act, §§ 48-1501 — 48-1512.

Chapter 16. Health-Related Cash Discount Cards, §§ 48-1601 — 48-1603.

Chapter 17. Bad Faith Assertions of Patent Infringement, §§ 48-1701 — 48-1708.

Chapter 18. Residential Solar Energy System Disclosure Act, §§ 48-1801 — 48-1809.

Chapter 19. Idaho Charitable Assets Protection Act, §§ 48-1901 — 48-1914.



## Chapter 1

# IDAHO COMPETITION ACT

Sec.

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48-102. Legislative findings, purpose, interpretation and scope of chapter.

48-103. Definitions.

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48-119. Purpose of extension to distributors of publications. [Repealed.]

**§ 48-101. Short title.** — This act shall be known and may be cited as the “Idaho Competition Act.”

**History.**

**I.C., § 48-101**, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-101, which comprised 1911, ch. 215, § 1, p. 688; reen. C.L. 107:1; C.S., § 2531; I.C.A., § 47-101, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**Compiler’s Notes.**

The term “this act” refers to S.L. 2000, Chapter 148, which is compiled as §§ 18-7803 and 48-101 to 48-118. The reference probably should be to “this chapter,” being chapter 1, title 48, Idaho Code.

**CASE NOTES**

**Retroactivity.**

Retroactive application of a statute is not allowed unless there is clear legislative intent to that effect; the language of the Idaho Competition Act indicates that it does not apply retroactively to permit the recovery of damages based upon conduct that occurred before its effective date. **State v. Daicel Chem. Indus., Ltd.**, 141 Idaho 102, 106 P.3d 428 (2005).

Decisions Under Prior Law

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Unfair competition.

### **Application.**

This section addresses only conspiracies or other combinations in restraint of trade. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Because this section specifically addresses the subject of attorney fees in cases brought under the antitrust law, it was more specific than § 12-120(3),

and was controlling in an action arising from a reimbursement agreement regarding sale of prescription drugs to health insurer's subscribers. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

### **Attorney Fees.**

The peculiar nature of a legal malpractice action requires the action to proceed as a suit within a suit; therefore, an award of attorney fees pursuant to the underlying antitrust action constitutes a part of the measure of damages in the malpractice case and must be submitted as part of the proof of damages under the antitrust claim; it is not sufficient to file a post-trial affidavit of costs and fees under *Idaho R. Civ. P. 54. Fitzgerald v. Walker*, 121 Idaho 589, 826 P.2d 1301 (1992).

### **Concerted Action.**

Concerted action is not necessary to have a violation of this section. *Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc.*, 96 Idaho 351, 528 P.2d 1286 (1974).

### **Conspiracy.**

Employer and his employees were held not guilty of conspiracy to drive competitor out of business, since acts of employees were, in effect, acts of employer. *Udelavitz v. Idaho Junk House*, 46 Idaho 441, 268 P. 15 (1928).

An internal division of a corporation is incapable of conspiring with that corporation, since they are one and the same, and the plurality of actors required for conspiracy is absent. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Since a conspiracy requires the agreement of at least two individuals, a finding of conspiracy against one defendant cannot be upheld where the other alleged conspirators are tried and absolved of participation in the same proceeding. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Power supplier's antitrust claims failed because a conspiracy among power company, its officers, directors, and agents did not provide the predicate for a successful antitrust claim under the statutes of *Idaho. Afton Energy, Inc. v. Idaho Power Co.*, 122 Idaho 333, 834 P.2d 850 (1992).

The federal courts have placed a “gloss” on the contract element of the federal statute requiring also that there be a “unity of purpose” between the contracting parties to violate the antitrust laws. This element is also a requirement of this section. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

### **Construction of Federal Antitrust Act.**

A federal district court was not required, in determining whether the Idaho statute applied to municipal corporations, to follow construction given to the federal antitrust act by the United States supreme court, on the ground that the state legislature, in enacting the statute, intended to adopt the construction previously given the federal act by the United States supreme court. *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938).

### **Contract Illegal under Federal Law.**

Contract concerning exhibition of motion picture films, which was illegal under Sherman Antitrust Act, 15 U.S.C.S. § 1 et seq., could not be enforced in action for damages. *Fox Film Corp. v. Tri-State Theatres*, 51 Idaho 439, 6 P.2d 135 (1931).

### **Deceptive Use of Names.**

Where a complaint alleged that the use of the name “United American Benefit Association, Inc.” by the defendant was deceptively similar to the name “American Home Benefit Association, Inc.” used by the plaintiff, and alleged that the general public was misled and deceived, and that much embarrassment and inconvenience had been suffered by the plaintiff as a result of the similarity of the names, the complaint was not demurrable on the ground that the plaintiff could not claim exclusive right to the use of the word “American” for the reason that it was broadly geographical. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

The specific intent and dangerous probability requirements of attempted monopolization are fulfilled when it is shown that (1) an entity possesses monopoly power, (2) that monopoly power has been employed so that an actual restraint on trade has been accomplished, and (3) the restraint has been obtained in an additional market within the distribution chain of the



relevant product. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **Elements.**

The basic elements necessary to prove the charge of attempted monopoly under this section are: (1) a specific intent by the defendant to monopolize, and (2) overt acts by the defendant which create a dangerous probability that the intended monopoly will be achieved. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

The specific intent and dangerous probability requirements of attempted monopolization are fulfilled when it is shown that (1) an entity possesses monopoly power, (2) that monopoly power has been employed so that an actual restraint on trade has been accomplished, and (3) the restraint has been obtained in an additional market within the distribution chain of the relevant product. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

There are three essential elements in every private antitrust action: (1) a violation of the antitrust law, (2) direct injury to the plaintiff from such violations, and (3) damages sustained by the plaintiff. Therefore, a finding of a violation by itself does not result in liability. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Injury arising out of a defendant's antitrust violation is an element of proof in establishing civil liability under this section, since injury to a person's business is essential to the cause of action. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **— Control of Market.**

There is no set degree of percentage of market power which must be possessed in order for a defendant to be dangerously close to achieving a monopoly. Rather, in order to determine whether there is a dangerous probability that a monopoly will be achieved, the extent of market power must be evaluated in conjunction with prevailing market conditions, as well as the business policies and performance of the defendant. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Where even liberally construing the record, defendant could have had not more than 24 percent of the insulation market, and in light of the highly

competitive nature of the market involved, the claim of attempted monopoly had to fail. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

#### **— Intent.**

Generally, since there is rarely any direct evidence of specific intent to monopolize, its existence may be inferred from anticompetitive conduct of the defendant. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

A finding that a defendant has engaged in a particular predatory or illegal act, such as selling below cost, is not the equivalent of finding specific intent, but is merely a basis from which such intent may be inferred; and isolated or occasional instances of selling below cost, while predatory or illegal in nature, do not necessarily indicate a specific intent to monopolize. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

The existence of specific intent to monopolize must be determined by weighing all of the circumstances in the particular case, including the nature of the conduct, its consistency and duration, the conditions of the market, and characteristics of the defendant. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

#### **Exclusive Agency Contracts.**

Contract creating an exclusive agency for the sale on commission of a given commodity in a specific territory and binding the agent not to sell the goods of any other manufacturers was not in violation of antitrust law. *Independent Gas & Oil Co. v. T.B. Smith Co.*, 51 Idaho 710, 10 P.2d 317 (1932).

#### **Fair Market Value.**

Market value has been defined as the price that a reasonably prudent purchaser would pay for the relevant product under the market conditions prevailing at the period of time in question and fair market value may be less than cost. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

#### **Geographical Terms.**

Geographical terms and words descriptive of character, quality, or places of manufacture or of sale of articles can not be monopolized as trade-marks. *American Home Benefit Ass'n v. United Am. Benefit Ass'n*, 63 Idaho 754, 125 P.2d 1010 (1942).

### **Illegal Practices.**

Neither buying in volume nor selling back at a profit is of itself illegal or inherently predatory. Such practices may become illegal or predatory only when used as methods of achieving a corner on a market, i.e., obtaining extensive control over the supply of a product so that the product's price might be artificially set in a manner most profitable to the controlling party, and a determination that such control or pending control exists cannot be made without reference to both the quantity of supply of the particular product and the defendant's share of control over that supply. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **In General.**

This chapter is patterned after the federal Sherman Antitrust Act, 15 U.S.C.S. § 1 et seq.; while federal decisions are not binding in interpreting and applying these sections, they do offer persuasive guidance. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **Insufficient Evidence.**

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company's gasoline products, was an illegal tying arrangement or that the agreement substantially lessened competition or tended to create a monopoly in favor of the oil company, the Idaho Antitrust Law and the Idaho Anti-Price Discrimination Act were not applicable. *Pollard Oil Co. v. Christensen*, 103 Idaho 110, 645 P.2d 344 (1982).

### **Labor Combinations.**

Labor is not commodity or article of commerce within purview of statutes. *Robison v. Hotel & Restaurant Employees Local No. 782*, 35 Idaho 418, 207 P. 132 (1922).

Lawful strike is not prevented by this section. *Robison v. Hotel & Restaurant Employees Local No. 782*, 35 Idaho 418, 207 P. 132 (1922).

This section raised no justiciable issue of state law when applied to action by independent contractors against labor organization for damages and injunctive relief from picketing. *Simpkins v. Southwestern Idaho Painters Dist. Council No. 57*, 95 Idaho 165, 505 P.2d 313 (1973).

### **Municipal Corporations.**

Municipal corporations are not amenable to this chapter. *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938); *Denman v. City of Idaho Falls*, 51 Idaho 118, 4 P.2d 361 (1931).

The Idaho Antitrust Law does not apply to municipal corporations, and hence a holder of notes and bonds of a gas company, whose business was allegedly ruined by the fact that the city operated a hydro-electric plant and monopolized the gas company's business, could not maintain an action against the city for damages resulting to the holder from the city's acts. *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938). See however, *Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U.S. 390, 27 S. Ct. 65, 51 L. Ed. 241 (1906).

### **Necessary Allegations.**

In an action under the antitrust law of Idaho, it was necessary that plaintiff not only allege sufficient facts to show a violation of the law by the defendant, but it must also appear that, by such violation of the law, plaintiff had been injured in his business or property. *Hurt v. Brandt*, 37 Idaho 186, 215 P. 842 (1923).

### **Per se Violation.**

Because agreements between health insurers and pharmacies to allegedly sell prescription drugs "below cost" did not attempt to fix prices to be charged in transactions with third parties, there was no per se illegal vertical combination. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

### **Proof of Damages.**

To meet the minimum requirement of proof in market exclusion cases in which lost profits are sought, the plaintiff must normally produce evidence

falling into one of the following categories: (1) comparison of plaintiff's performance before and after the wrongful conduct under otherwise similar conditions, (2) comparison of performance of plaintiff's business, with comparable business in an unrestrained market otherwise comparable to plaintiff's market or (3) loss of specific business or customers. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

In an antitrust case, there was no justification for trial court's determination that the gross revenues of the defendant company and subsidiary provided a reasonable foundation for calculating the lost profits of plaintiffs, as such a method of figuring damages assumed, without any support in the record, that the defendant's operation would not have won any portion of the market absent antitrust violations, and that the plaintiffs had the capacity to assimilate all of the business which defendant performed, and that plaintiffs would have won that business over other insulators who chose not to participate in the action. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

The factfinder may not determine damages by mere speculation and guesswork, and there must be a reasonable foundation established by the evidence from which the factfinder can calculate the amount of damages. It will be enough if the evidence shows the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **Sale of Services.**

Language of this section which prohibits the selling of "any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions" plainly applies only to the sale of an "article or product"; the sale of services is not included. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **Sales Below Cost.**

This section does not speak in terms of prohibiting sales below cost. The phrase "below cost" in the world of economics is, without further definition, an imprecise term, not always indicative of anticompetitive conduct. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

While “selling at a loss” might be one factor for a court to consider in determining whether or not specific intent exists to drive a competitor out of business, without additional proof and findings of fact, “selling at a loss” does not constitute a violation of the prohibition against the selling of “any article or product at less than its fair market value . . .” *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

### **Sufficiency of Complaint.**

It was necessary that plaintiff allege not only sufficient facts to show violation of law by defendant, but it must also appear that, by reason of such violation of law, plaintiff had been injured in his business or property. *Hurt v. Brandt*, 37 Idaho 186, 215 P. 842 (1923).

Petition in action for threefold damages need not state facts showing right of action with all fullness and particularity required of indictment, but sufficiency of petition must be tested by local practice obtaining in civil actions. *Hurt v. Brandt*, 37 Idaho 186, 215 P. 842 (1923).

### **Sufficient to Convict.**

Defendant, and the corporation for which he worked, violated this section when he tore down a sign placed in an adjoining building by plaintiff to notify its customers that it had moved. *Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc.*, 96 Idaho 351, 528 P.2d 1286 (1974).

### **Unfair Competition.**

One is not guilty of unfair competition unless, with the direct purpose of destroying his competitor’s business, he forces prices lower than he can honestly believe will yield a profit when he shall have eventually disposed of the commodities purchased. *Udelavitz v. Idaho Junk House*, 46 Idaho 441, 268 P. 15 (1928).

In order to make out a case of “unfair competition,” it was not necessary to show that any person had been actually deceived by defendant’s conduct and led to purchase his goods in the belief that they were the goods of the plaintiff, or to deal with the defendant thinking that he was dealing with the plaintiff, and it was sufficient to show that such deception would be the natural and probable result of defendant’s acts. *American Home Benefit Ass’n v. United Am. Benefit Ass’n*, 63 Idaho 754, 125 P.2d 1010 (1942).

The sale of goods of one manufacturer or vendor as those of another was “unfair competition” and constituted a “fraud” which a court of equity could lawfully prevent by injunction. [American Home Benefit Ass’n v. United Am. Benefit Ass’n](#), 63 Idaho 754, 125 P.2d 1010 (1942).

## RESEARCH REFERENCES

**ALR.** — Right of corporation to indemnity for civil or criminal liability incurred by employee’s violation of antitrust laws. [37 A.L.R.3d 1355](#).

Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. [61 A.L.R.3d 397](#).

Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. [35 A.L.R.6th 245](#).

**§ 48-102. Legislative findings, purpose, interpretation and scope of chapter.** — (1) The Idaho legislature finds that fair competition is fundamental to the free market system. The unrestrained interaction of competitive forces will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic and social institutions.

(2) The purpose of this chapter is to maintain and promote economic competition in Idaho commerce, to provide the benefits of that competition to consumers and businesses in the state, and to establish efficient and economical procedures to accomplish these purposes and policies.

(3) The provisions of this chapter shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes and consistent with this chapter's purposes, as set forth in subsection (2) of this section.

(4) This chapter applies to conduct proscribed herein that affects Idaho commerce.

**History.**

I.C., § 48-102, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-102, which comprised 1911, ch. 215, § 2, p. 689; reen. C.L. 107:2; C.S., § 2532; I.C.A., § 47-102, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.



**§ 48-103. Definitions.** — As used in this act:

(1) “Idaho commerce” means any economic activity occurring wholly or partly within the state of Idaho, or which affects economic activity within the state of Idaho.

(2) “Person” means any natural person, corporation, partnership, trust, association, or any other legal or commercial entity.

**History.**

I.C., § 48-103, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-103, which comprised 1911, ch. 215, § 3, p. 688; reen. C.L. 107:3; C.S., § 2533; I.C.A., § 47-103, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 2000, Chapter 148, which is compiled as §§ 18-7803 and 48-101 to 48-118. The reference probably should be to “this chapter,” being chapter 1, title 48, Idaho Code.

**§ 48-104. Unreasonable restraint of trade or commerce.** — A contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful.

**History.**

I.C., § 48-104, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-104, which comprised 1911, ch. 215, § 4, p. 688; reen. C.L. 107:4; C.S., § 2534; I.C.A., § 47-104, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**CASE NOTES**

**Bid rigging.**

**Purpose.**

**Bid Rigging.**

Because an agreement not to bid at a sale of county-owned land at public auction constituted illegal bid rigging under this section and § 1 of the Sherman Act, 15 U.S.C.S. § 1, the agreement was unenforceable, and a jury's award of damages for breach of the agreement was overturned. *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924, 265 P.3d 1136 (2011).

**Purpose.**

This section requires a claimant to show a purpose to drive another out of business, reflecting the notion that unfair competition laws were enacted to protect competition, not competitors. This section strikes the balance between free competition and fair competition by offering relief only where a company can show a competitor's intent to drive the company out of business, rather than simply an intent to compete. *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010).

## RESEARCH REFERENCES

**A.L.R.** — Construction and Application of Public Interest Requirement of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e)(1) (Tunney Act). 2 A.L.R. Fed. 3d 4.

**§ 48-105. Monopolies.** — It is unlawful to monopolize, attempt to monopolize, or combine or conspire to monopolize any line of Idaho commerce.

**History.**

I.C., § 48-105, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-105, which comprised 1911, ch. 215, § 5, p. 688; reen. C.L. 107:5; C.S., § 2535; I.C.A., § 47-105, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**RESEARCH REFERENCES**

**A.L.R.** — Construction and Application of Public Interest Requirement of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e)(1) (Tunney Act). 2 A.L.R. Fed. 3d 4.

**§ 48-106. Acquisitions that substantially lessen competition.** — (1) It is unlawful for a person to acquire, directly or indirectly, the whole or any part of the stock, share capital, or other equity interest or the whole or any part of the assets of, another person engaged in Idaho commerce, where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly of any line of Idaho commerce.

(2) This section shall not apply to persons purchasing the stock or other equity interest of another person solely for investment and not using those assets by voting or otherwise to bring about, or attempt to bring about, the substantial lessening of competition. Nothing contained in this section shall prevent a person engaged in Idaho commerce from causing the formation of subsidiary corporations or other business organizations, or from owning and holding all or a part of the stock or equity interest of such subsidiary corporations or other business organizations.

#### **History.**

I.C., § 48-106, as added by 2000, ch. 148, § 3, p. 377.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 48-106, which comprised 1911, ch. 215, § 6, p. 688; reen. C.L. 107:6; C.S., § 2536; I.C.A., § 47-106, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

### **RESEARCH REFERENCES**

**A.L.R.** — Construction and Application of Public Interest Requirement of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e)(1) (Tunney Act). 2 A.L.R. Fed. 3d 4.

**§ 48-107. Exempt activities.** — (1) No provision of this chapter shall be construed to prohibit:

(a) Activities that are exempt from the operation of the federal antitrust laws.

(b) Activities required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(c) Activities of a municipality or its officers or employees acting in an official capacity, to the extent that those activities are authorized or directed by state law.

(d) The existence of, or membership in, organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit; nor shall the provisions of this act forbid or restrain individual members of such organizations from lawfully carrying out legitimate objectives of the organization.

(e) Activities of any labor organization, individual members of the labor organization, or group of labor organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed predominantly to labor objectives which are permitted under the laws of this state or of the United States.

(2) Persons engaged in the production of agricultural products may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing the products of these persons, to the extent permitted under the laws of this state or of the United States. These associations may have marketing agencies in common and such associations and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must conform to the requirements of chapter 26, title 22, Idaho Code, or alternatively satisfy the following requirements:

(a) Operate for the mutual benefit of the members thereof, as producers;

(b) Not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members; and

(c) Conform to one (1) or both of the following:

(i) That no member of the association is allowed more than one (1) vote because of the amount of stock or membership capital he may own therein; or

(ii) That the association does not pay dividends on stock or membership capital in excess of eight percent (8%) per annum.

### **History.**

I.C., § 48-107, as added by 2000, ch. 148, § 3, p. 377; am. 2011, ch. 244, § 1, p. 656.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 48-107, which comprised 1911, ch. 215, § 7, p. 688; reen. C.L. 107:7; C.S., § 2537; I.C.A., § 47-107, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

### **Amendments.**

The 2011 amendment, by ch. 244, added “or alternatively satisfy the following requirements” at the end of the introductory paragraph in subsection (2) and added paragraphs (2)(a) through (2)(c).

### **Compiler’s Notes.**

The term “this act” in paragraph (1)(d) refers to S.L. 2000, Chapter 148, which is compiled as §§ 18-7803 and 48-101 to 48-118. The reference probably should be to “this chapter,” being chapter 1, title 48, Idaho Code.

### **Effective Dates.**

Section 2 of S.L. 2011, ch. 244 declared an emergency retroactively to July 1, 2000. Approved April 7, 2011.

## **CASE NOTES**

**Applicability.**

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Idaho **Const., Art. XII, § 2**, and, under paragraph (1)(c) of this section, it is afforded a statutory exemption from the Idaho competition act; since § 50-344 does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. **Plummer v. City of Fruitland, 139 Idaho 810, 87 P.3d 297 (2004).**



**§ 48-108. Civil actions and settlements by the attorney general. — (1)**

Whenever the attorney general has reason to believe that any person is engaging, has engaged, or is about to engage in any act or practice declared unlawful by this chapter, the attorney general may bring an action in the name of the state against that person:

- (a) To obtain a declaratory judgment that the act or practice violates the provisions of this chapter;
- (b) To enjoin any act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;
- (c) To recover on behalf of the state and its agencies actual damages or restitution;
- (d) To recover civil penalties of up to fifty thousand dollars (\$50,000) per violation of section 48-104 or 48-105, Idaho Code, or any injunction, judgment or consent order issued or entered into pursuant to this chapter and reasonable expenses, investigative costs and attorney's fees; and
- (e) To obtain an order requiring divestiture of any assets:
  - (i) Acquired in violation of [section 48-106, Idaho Code](#), to the extent determined necessary by the district court to avoid the creation of a monopoly or any likely substantial lessening of competition resulting from such transaction found violative of [section 48-106, Idaho Code](#); or
  - (ii) To restore competition in any line of Idaho commerce which has been eliminated by a violation of [section 48-105, Idaho Code](#).

(2) The attorney general also may bring a civil action in the name of the state, as parens patriae on behalf of persons residing in this state, to secure monetary relief as provided under this chapter for injury directly or indirectly sustained by those persons because of any violation of section 48-104 or 48-105, Idaho Code, in accordance with the following provisions:

(a) The district court shall award the attorney general as monetary relief the total damages sustained for violations of section 48-104 or 48-105, Idaho Code, and the cost of suit, including a reasonable attorney's fee. The court shall increase any damage recovery to an amount not in excess of three (3) times the damages sustained if the court finds that the violation at issue constituted a per se violation of [section 48-104, Idaho Code](#), or an intentional violation of [section 48-105, Idaho Code](#). The court shall exclude from the amount of monetary relief awarded in such action any amount which duplicates amounts which have been awarded for the same injury already or which are allocable to persons who have excluded their claims pursuant to subsection (2)(c) of this section.

(b) In any action brought under this section, the attorney general shall, at such times, in such manner, and with such content as the district court may direct, cause notice of the parens patriae action to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person, the court shall direct the attorney general to give such notice as may be required by due process of law.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from such adjudication the portion of the attorney general's claim for monetary relief attributable to him by filing notice of such election with the court within the time period specified in the notice of such action given to the persons to be benefited by the action. Any person failing to give such notice shall be barred during the pendency of such action from commencing an action in his or her own name for the injury alleged in such action and the final judgment in such action shall be res judicata as to any claim which could be brought by such person under this act based on the facts alleged or proven in such action.

(d) All damages shall be distributed in such a manner that will afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(3) In lieu of instigating or continuing an action or proceeding, or to conclude an investigation commenced or contemplated under [section 48-109, Idaho Code](#), the attorney general may accept a consent decree with respect to any act or practice alleged to be a violation of this chapter. The

consent decree may include a stipulation for the payment of civil penalties, the attorney general's reasonable expenses, investigative costs and attorney's fees, an agreement to pay damages or to allow for restitution of money, property or other things received in connection with a violation of this chapter, and agreed to injunctive provisions. Before any consent decree entered into pursuant to this section is effective, it must be approved by the district court and an entry made in the district court in the manner required for making an entry of judgment. If the consent decree submitted to the court is to settle an action brought under subsection (2) of this section, notice of the proposed settlement shall be given in such manner as the court directs. Once court approval is received, any breach of the conditions of the consent decree shall be treated as a violation of a court order, and shall be subject to all penalties provided by law for violation of court orders, including the penalties set forth in [section 48-111, Idaho Code](#).

(4) The attorney general may proceed under any antitrust laws in the federal courts on behalf of this state or any of its political subdivisions or agencies.

### **History.**

[I.C., § 48-108](#), as added by 2000, ch. 148, § 3, p. 377.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former § 48-108, which comprised 1911, ch. 215, § 8, p. 688; reen. C.L. 107:8; C.S., § 2538; I.C.A., § 47-108, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

### **Compiler's Notes.**

The term "this act" in paragraph (2)(c) refers to S.L. 2000, Chapter 148, which is compiled as §§ 18-7803 and 48-101 to 48-118. The reference probably should be to "this chapter," being chapter 1, title 48, Idaho Code.

**§ 48-109. Civil investigations.** — (1) Whenever the attorney general has reason to believe that a person is engaging or has engaged in any act or practice declared unlawful by this chapter, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to a civil investigation, a written civil investigative demand requiring that person to appear and give oral testimony, under oath, concerning documentary material or information, or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as may be stated in the investigative demand, or to furnish any combination thereof, concerning the conduct of any Idaho commerce that is the subject matter of the investigation. The return date of a civil investigative demand shall be not less than thirty (30) days after service of the demand.

(2) To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may also issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

(3)(a) The scope of any civil investigative demand or subpoena shall be consistent with the scope of discovery as provided for by **rule 26(b)(1), Idaho rules of civil procedure.**

(b) Any person who is not the subject of investigation shall be reimbursed the reasonable expenses of complying with a civil investigative demand or subpoena.

(4) At any time before the return date specified in a civil investigative demand, or within thirty (30) days after the demand has been served, whichever period is later, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada county.

(5) Any person who in good faith complies with a subpoena or investigative demand issued under this section shall be immune from criminal or civil liability for such compliance, so long as such person has

complied with any express contractual obligation to notify a third party of the civil investigative demand or subpoena.

(6) Except as provided in subsection (7) of this section, any procedure, testimony taken, or material produced under this section shall be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation unless confidentiality is waived by the person whose testimony is disclosed, or is waived by the person who produced to the attorney general or his designee the material being disclosed, or the disclosure is authorized by court order.

(7) The attorney general or his designee may disclose the testimony or material to a person who has a need to know such information and is employed by this state, the United States, or any other state, if, before disclosure, the receiving official agrees in writing to comply with the confidentiality provisions of this section and the attorney general or his designee has determined prior to making such disclosure that disclosure to the receiving person is reasonably necessary to permit proper enforcement of the antitrust laws of the United States or any state.

(8) The attorney general or his designee may exclude from the place of any examination under this section any person, except the person being examined and that person's counsel.

### **History.**

I.C., § 48-109, as added by 2000, ch. 148, § 3, p. 377.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former § 48-109, which comprised 1911, ch. 215, § 9, p. 688; reen. C.L. 107:9; C.S., § 2539; I.C.A., § 47-109, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-110. Failure to obey civil investigative demand or subpoena. —**

(1) If any person fails or refuses to obey any subpoena or civil investigative demand issued by the attorney general, the attorney general may, after notice, apply to the district court and, after a hearing, request an order ordering the person to comply with the subpoena or civil investigative demand issued by the attorney general.

(2) The court shall award the prevailing party reasonable expenses and attorney's fees incurred in obtaining or resisting an order under this section if the court finds that the attorney general's request for an order under this section or a person's resistance to obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Disobedience of any order entered under the provisions of this section shall be treated as a violation of a court order, and subject the offending person to all penalties provided by law for violations of court orders, including the payment of civil penalties of not more than ten thousand dollars (\$10,000).

**History.**

I.C., § 48-110, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 48-110, which comprised 1911, ch. 215, § 10, p. 688; compiled and reen. C.L. 107:10; C.S., § 2540; I.C.A., § 47-110, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-111. Violation of court orders and consent decrees — Penalties.**

— Any person who violates the terms of a consent order entered into pursuant to [section 48-108, Idaho Code](#), or any other judgment or final order entered into under the provisions of this chapter, shall forfeit and pay a civil penalty of not more than fifty thousand dollars (\$50,000) for each violation, the amount of the penalty to be determined by the district court issuing the judgment or order, or approving the consent decree.

**History.**

[I.C., § 48-111](#), as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-111, which comprised 1911, ch. 215, § 11, p. 688; reen. C.L. 107:11; C.S., § 2541; I.C.A., § 47-111, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-112. Additional relief of district court authorized.** — When the state prevails in any action brought under [section 48-108, Idaho Code](#), the court shall award reasonable costs and attorney's fees to the attorney general. In addition, the court may:

(1) Make orders or judgments as necessary to prevent the use or employment by a person of any act or practice declared unlawful by this act; (2) Make orders or judgments as necessary to compensate persons for damages sustained or to provide for restitution to persons of money, property or other things received from persons in connection with a violation of this chapter; (3) Appoint a receiver to oversee assets or order sequestration of assets whenever it appears that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this section and assess the expenses of a master, receiver or escrow agent against the defendant; and (4) Grant other appropriate relief.

### **History.**

[I.C., § 48-112](#), as added by 2000, ch. 148, § 3, p. 377.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former § 48-112, which comprised 1911, ch. 215, § 12, p. 688; reen. C.L. 107:12; C.S., § 2542; I.C.A., § 47-112, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

### **Compiler's Notes.**

The term “this act” at the end of subsection (1) refers to S.L. 2000, Chapter 148, which is compiled as §§ 18-7803 and 48-101 to 48-118. The reference probably should be to “this chapter,” being chapter 1, title 48, Idaho Code.



**§ 48-113. Private causes of action.** — (1) Any person injured directly or threatened with direct injury by reason of anything prohibited by this chapter, may bring an action for injunctive relief, damages, and, as determined by the court, reasonable costs and attorney's fees. The court shall exclude from the amount of monetary relief awarded to a plaintiff under this section any amount which duplicates amounts allocable to any other actual or potential plaintiff including, without limitation, potential claims by the attorney general on behalf of indirect purchasers for the same conduct or injury.

(2) If the district court finds that the violation at issue constituted a per se violation of [section 48-104, Idaho Code](#), or an intentional violation of [section 48-105, Idaho Code](#), it shall increase the recovery to an amount not in excess of three (3) times the damages sustained.

#### **History.**

[I.C., § 48-113](#), as added by 2000, ch. 148, § 3, p. 377.

### **STATUTORY NOTES**

#### **Cross References.**

Attorney general, § 67-1401 et seq.

#### **Prior Laws.**

Former § 48-113, which comprised 1911, ch. 215, § 13, p. 688; reen. C.L. 107:13; C.S., § 2543; I.C.A., § 47-113, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

### **RESEARCH REFERENCES**

**ALR.** — Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. [35 A.L.R.6th 245](#).

**§ 48-114. Awards to the attorney general — Use of moneys.** — All costs and fees recovered by the attorney general under the terms of this chapter shall be remitted to the consumer protection account [consumer protection fund]. Such costs and fees deposited into the consumer protection account [consumer protection fund] under this chapter shall be treated as interaccount receipts and may be expended pursuant to interaccount appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. All penalties recovered under section 48-108(1)(d), 48-110 or 48-111, Idaho Code, or actual damages or restitution recovered under [section 48-108\(1\)\(c\), Idaho Code](#), shall be remitted to the general fund.

**History.**

[I.C., § 48-114](#), as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

General fund, § 67-1205.

**Prior Laws.**

Former § 48-114, which comprised 1911, ch. 215, § 14, p. 688; reen. C.L. 107:14; C.S., § 2544; I.C.A., § 47-114, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**Compiler's Notes.**

The bracketed insertions at the end of the first sentence and near the beginning of the second sentence were added by the compiler to correct the name of the referenced fund. See § 48-606.

**§ 48-115. Statute of limitations.** — (1) Any action brought by the attorney general pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues.

(2) Any other action brought pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues, or within one (1) year after the conclusion of an action brought by the state pursuant to this chapter based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

(3) The foregoing statute of limitations shall be tolled during any period when the defendant in any action fraudulently concealed the events upon which the cause of action is based.

**History.**

I.C., § 48-115, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 48-115, which comprised 1911, ch. 215, § 15, p. 688; reen. C.L. 107:15; C.S., § 2545; I.C.A., § 47-115, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-116. Action not barred because it affects interstate or foreign commerce.** — No action under this chapter shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

**History.**

I.C., § 48-116, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-116, which comprised 1911, ch. 215, § 16, p. 688; reen. C.L. 107:16; C.S., § 2546; I.C.A., § 47-116, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-117. Service of notice.** — Service of any notice, civil investigative demand, or subpoena under this chapter shall be made personally within this state, but if personal service cannot be obtained, substituted service may be made by mailing service by registered or certified mail to the last known place of business, residence, or abode of the person within or without this state.

**History.**

I.C., § 48-117, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-117, which comprised 1911, ch. 215, §§ 17, 18, p. 688; compiled and reen. C.L. 107:17; C.S., § 2547; I.C.A., § 47-117., was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-118. Venue.** — Any action, application, or motion brought by the attorney general against a person under this chapter may be filed in the district court of the county in which the person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the pleading may be brought in any district court in this state.

**History.**

I.C., § 48-118, as added by 2000, ch. 148, § 3, p. 377.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-118, which comprised 1951, ch. 197, § 1, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

**§ 48-119. Purpose of extension to distributors of publications.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1951, ch. 197, § 2, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.





## Chapter 2

# ANTI-PRICE DISCRIMINATION ACT

Sec.

48-201. Definitions.

48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or receipt of discrimination prohibited.

48-203. Cooperative associations exempt.

48-204. Rights of persons injured by violations of act.

48-205. Title of act.

48-206. Separability.

**§ 48-201. Definitions.** — The following terms for the purposes of this act are hereby defined as follows:

(a) “Person” means the plural as well as the singular and shall include an individual, partnership, association, a joint stock company, business trust and an incorporated as well as an unincorporated organization.

(b) The term “price” as used herein shall mean the net price to the buyer after deduction of all discounts, rebates or other price concessions paid or allowed by the seller.

(c) The term “commerce” means trade or commerce within this state.

**History.**

1937, ch. 229, § 1, p. 406.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.

**CASE NOTES**

**Insufficient Evidence.**

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company’s gasoline products, was an illegal tying arrangement or that the agreement substantially lessened competition or tended to create a monopoly in favor of the oil company, the Idaho Antitrust Law and this chapter were not applicable. *Pollard Oil Co. v. Christensen*, 103 Idaho 110, 645 P.2d 344 (1982).

**§ 48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or receipt of discrimination prohibited.** — (a) It shall be unlawful for any

person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in such sections, communities, cities or portions thereof in this state, where the effect of such discriminations may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: and provided further, that nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonable goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, in any suit or other proceeding in which any violation of this act may be at issue, that there has been discrimination in price, or in services or facilities furnished, or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with such violation: provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price, or the payment for or furnishing of services or facilities to any

purchaser or purchasers was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

(c) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise; provided, however, that in all such transactions of sale and purchase it shall be unlawful for either party to such transaction to pay or grant anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, to the other party to the transaction or to any agent, representative, or other intermediary therein, where such agent, representative, or other intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of the said other party to such transaction.

(d) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

**History.**

1937, ch. 229, § 2, p. 406.

**STATUTORY NOTES****Cross References.**

Discrimination and unfair competition in buying and selling dairy products, § 37-1001 et seq.

Farm produce price discrimination, prevention of, § 22-1601 et seq.

**Compiler's Notes.**

The term "this act" near the beginning of subsection (b) refers to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.

**CASE NOTES****Attorney Fees.**

The peculiar nature of a legal malpractice action requires the action to proceed as a suit within a suit; therefore, an award of attorney fees pursuant to the underlying antitrust action constitutes a part of the measure of damages in the malpractice case, and must be submitted as part of the proof of damages under the antitrust claim; it is not sufficient to file a post-trial affidavit of costs and fees under *Idaho R. Civ. P. 54. Fitzgerald v. Walker*, 121 Idaho 589, 826 P.2d 1301 (1992).

**RESEARCH REFERENCES**

**ALR.** — Statutes prohibiting buyer or seller of commodities from fixing prices in one locality higher or lower than in another locality. 67 A.L.R.3d 26.

**§ 48-203. Cooperative associations exempt.** — Nothing in this act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

**History.**

1937, ch. 229, § 3, p. 406.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.

**§ 48-204. Rights of persons injured by violations of act.** — (a) Any person injured by any violation, or who will suffer injury from any threatened violation, of this act, may maintain an action, in any court of competent jurisdiction of this state, to prevent, restrain or enjoin such violation or threatened violation. If in such action, a violation or threatened violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and the plaintiff in said action shall be entitled to recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

(b) In the event no injunctive relief is sought or required, any person injured by any violation of this act, may maintain an action for damages alone in any court of competent jurisdiction in this state, and the measure of damages in such action shall be the same as that prescribed by subsection (a) of this section.

(c) In any proceedings instituted or action brought in pursuance of the provisions of subsections (a) and (b) of this section, the plaintiff, upon proof that he has been unlawfully discriminated against by the defendant, shall be conclusively presumed to have sustained damages equal to the monetary amount or equivalent of the unlawful discrimination; and in addition thereto, may establish such further damages, if any, as he may have sustained as a result of such discrimination.

(d) Where a particular trade or industry of which the person, firm or corporation complained against is a member, has an established cost survey for the localities and vicinities in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act.

(e) Any contract, express or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal contract and no recovery thereon shall be had.

### **History.**

1937, ch. 229, § 4, p. 406.

## STATUTORY NOTES

### **Compiler's Notes.**

The term "this act" throughout this section refers to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.

## CASE NOTES

### **Attorney Fees.**

The peculiar nature of a legal malpractice action requires the action to proceed as a suit within a suit; therefore, an award of attorney fees pursuant to the underlying antitrust action constitutes a part of the measure of damages in the malpractice case, and must be submitted as part of the proof of damages under the antitrust claim; it is not sufficient to file a post-trial affidavit of costs and fees under [Idaho R. Civ. P. 54. Fitzgerald v. Walker, 121 Idaho 589, 826 P.2d 1301 \(1992\).](#)



**§ 48-205. Title of act.** — This act shall be known and designated as the “Anti-Price Discrimination Act” and its inhibitions against discrimination shall embrace any scheme of special concessions or rebates, any collateral contracts or agreements or any device of any nature whereby discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

**History.**

1937, ch. 229, § 5, p. 406.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” at the beginning and end of this section refers to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.

**§ 48-206. Separability.** — If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

**History.**

1937, ch. 229, § 6, p. 406.

**STATUTORY NOTES**

**Compiler's Notes.**

The terms “this act” and “the act” refer to S.L. 1937, Chapter 229, which is compiled as §§ 48-201 to 48-206.



## Chapter 3

### IDAHO PATIENT ACT

Sec.

48-301. Short title. [Effective January 1, 2021.]

48-302. Legislative intent. [Effective January 1, 2021.]

48-303. Definitions. [Effective January 1, 2021.]

48-304. Requirements for extraordinary collection action. [Effective January 1, 2021.]

48-305. Fees and costs for extraordinary collection action. [Effective January 1, 2021.]

48-306. Extraordinary collection after untimely notice — Limitation. [Effective January 1, 2021.]

48-307. Burden of proof. [Effective January 1, 2021.]

48-308. Rebuttable presumption of receipt. [Effective January 1, 2021.]

48-309. Delivery of consolidated summary of services. [Effective January 1, 2021.]

48-310. Contracted service. [Effective January 1, 2021.]

48-311. Enforcement and civil penalties. [Effective January 1, 2021.]

48-312. Non-extraordinary collection actions. [Effective January 1, 2021.]

**§ 48-301. Short title. [Effective January 1, 2021].** — This act shall be known and may be cited as the “Idaho Patient Act.”

**History.**

**I.C., § 48-301**, as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former chapter 3 of Title 48, which comprised the following sections, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-301: 1937, ch. 240, § 1, p. 429.

48-302: 1937, ch. 240, § 2, p. 429.

48-303: 1937, ch. 240, § 3, p. 429.

48-304: 1937, ch. 240, § 4, p. 429.

48-305: 1937, ch. 240, § 5, p. 429.

48-306: 1937, ch. 240, § 6, p. 429.

48-306A: **I.C., § 48-306A**, as added by 1969, ch. 239, § 1, p. 755.

48-307: 1937, ch. 240, § 7, p. 429; am. 1955, ch. 94, § 3, p. 208.

48-308: **I.C., § 48-308**, as added by 1955, ch. 94, § 4, p. 208.

48-309: **I.C., § 48-309**, as added by 1955, ch. 94, § 5, p. 208.

48-310: **I.C., § 48-310**, as added by 1955, ch. 94, § 6, p. 208.

48-311: **I.C., § 48-311**, as added by 1955, ch. 94, § 7, p. 208.

48-312: **I.C., § 48-312**, as added by 1955, ch 94, § 8, p. 208.

**Compiler’s Notes.**

The term “this act” refers to S.L. 2020, Chapter 139, which is compiled as §§ 48-301 to 48-312.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-302. Legislative intent. [Effective January 1, 2021].** — The Idaho legislature finds that medical billing practices have little visibility to Idaho citizens. As a result, consumers often find themselves in collection actions for debts they were unaware of, from health care providers whom they do not recognize. Once in collections, current Idaho law enables excessive attorney's fees and fails to provide judges with clear guidance to combat abuses of the collections process. This chapter shall govern the fair collection of debts owed to health care providers.

**History.**

I.C., § 48-302, as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-302 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-303. Definitions. [Effective January 1, 2021].** — For the purposes of this chapter:

(1) “Consolidated summary of services” means a written notice that contains, at a minimum, the following:

(a) The name and contact information, including telephone number, of the patient;

(b) The name and contact information, including telephone number, of the health care facility that the patient visited to receive goods or services;

(c) The date and duration of the visit to the health care facility by the patient;

(d) A general description of goods and services provided to the patient during the visit to the health care facility, including the name, address, and telephone number of each billing entity whose health care providers provided the services and goods to the patient; and

(e) A clear and conspicuous notification at the top of the notice that states: “This is Not a Bill. This is a Summary of Medical Services You Received. Retain This Summary for Your Records. Please Contact Your Insurance Company and the Health Care Providers Listed on this Summary to Determine the Final Amount You May Be Obligated to Pay.”

(2) “Contested judgment” means a court judgment sought by one (1) party that is challenged by another party through a filing with the court or by presenting evidence or argument at a hearing before the court.

(3) “Extraordinary collection action” means any of the following actions done in connection with a patient’s debt:

(a) Prior to sixty (60) days from the patient’s receipt of the final statement, selling, transferring, or assigning any amount of a patient’s debt to any third-party, or otherwise authorizing any third-party to collect the debt in a name other than the name of the health care provider;



(b) Reporting adverse information about the patient to a consumer reporting agency; or

(c) Commencing any judicial or legal action or filing or recording any document in relation thereto, including but not limited to:

(i) Placing a lien on a person's property or assets;

(ii) Attaching or seizing a person's bank account or any other personal property;

(iii) Initiating a civil action against any person; or

(iv) Garnishing an individual's wages.

(4) "Final statement" means a written notice that contains, at a minimum, the following:

(a) The name and contact information, including telephone number, of the patient;

(b) The name and contact information, including telephone number, of the health care facility where the health care provider provided goods and services to the patient;

(c) A list of the goods and services that the health care provider provided to the patient during the patient's visit to the health care facility, including the initial charges for the goods and services and the date the goods and services were provided, in reasonable detail;

(d) A statement that a full itemized list of goods and services provided to the patient is available upon the patient's request;

(e) The name of the third-party payors to which the charges for health care services were submitted by the health care provider and the patient's group and membership numbers;

(f) A detailed description of all reductions, adjustments, offsets, third-party payor payments, including payments already received from the patient, that adjust the initial charges for the goods and services provided to the patient during the visit; and

(g) The final amount that the patient is liable to pay after taking into account all applicable reductions, including but not limited to the items

identified in paragraph (f) of this subsection.

(5) “Health care facility” means any person, entity, or institution operating a physical or virtual location that holds itself out to the public as providing health care services through itself, through its employees, or through third-party health care providers. Health care facilities include but are not limited to hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; urgent care centers; diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings, as well as medical transportation providers.

(6) “Health care provider” means:

(a) A physician or other health care practitioner licensed, accredited, or certified to perform health care services consistent with state law, or any agent or third-party representative thereof; or

(b) A health care facility or its agent.

(7) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(8) “Patient” means a person who seeks or receives services from a health care provider. For the purposes of this chapter, “patient” includes a parent if the patient is a minor, a legal guardian if the patient is an adult under guardianship, or any person contractually or otherwise liable for the financial obligations of the person receiving goods or services from the health care provider.

(9) “Third-party payor” means a health carrier as defined in [section 41-5903, Idaho Code](#), or a self-funded plan as defined in section 41-4002 or 41-4102, Idaho Code.

(10) “Uncontested judgment” means a court judgment sought by one (1) party that is not contested by another party by filing with the court or by presenting evidence or argument at a hearing before the court.

### **History.**

[I.C., § 48-303](#), as added by 2020, ch. 139, § 1, p. 426.

## **STATUTORY NOTES**

**Prior Laws.**

Former § 48-303 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-304. Requirements for extraordinary collection action. [Effective January 1, 2021].** — No person shall engage, directly or indirectly, in any extraordinary collection action against a patient unless:

(1) Within forty-five (45) days from the date of the provision of goods or the delivery of services to the patient or from the date of discharge of the patient from a health care facility, whichever is later, a health care provider submits its charges related to the provision of goods or services to the third-party payor or payors of the patient, identified by the patient to the health care provider in connection with the services, if any, or, in the event no third-party payor was identified, to the patient;

(2) Within sixty (60) days from the date of the provision of goods or services to the patient or from the date of discharge, whichever is later, the patient receives from the health care facility that the patient visited, a consolidated summary of services, free of charge, unless the health care facility is exempted from providing a consolidated summary of services pursuant to [section 48-309, Idaho Code](#);

(3) The patient receives, free of charge, a final statement from the billing entity of the health care provider;

(4) The health care provider does not charge or cause to accrue any interest, fees, or other ancillary charges until at least sixty (60) days have passed from the date of receipt of the final statement; and

(5) At least ninety (90) days have passed from receipt of the final statement by the patient and final resolution of all internal reviews, good faith disputes, and appeals of any charges or third-party payor obligations or payments.

**History.**

[I.C., § 48-304](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-304 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-305. Fees and costs for extraordinary collection action. [Effective January 1, 2021].** — (1) Notwithstanding any provision of law or agreement to the contrary, a patient shall have no liability to any party taking extraordinary collection action for costs, expenses, and fees, including attorney's fees, unless the party has complied with [section 48-304, Idaho Code](#), and then subject to the following limitations:

(a) In the case of an uncontested judgment against the patient, the court may award, in addition to the outstanding principal, up to three hundred fifty dollars (\$350) or an amount equal to one hundred percent (100%) of the outstanding principal amount, whichever is less, plus any prejudgment interest accrued in accordance with [section 48-304\(4\), Idaho Code](#), and any postjudgment interest awarded by the court;

(b) In the case of a contested judgment against the patient, the court may award, in addition to the outstanding principal, up to seven hundred fifty dollars (\$750) or an amount equal to one hundred percent (100%) of the outstanding principal amount, whichever is less, plus any prejudgment interest accrued in accordance with [section 48-304\(4\), Idaho Code](#), and any postjudgment interest awarded by the court;

(c) In the case of postjudgment motions and writs, the court may award up to seventy-five dollars (\$75.00) for any successful motion or application for a writ of attachment to any particular garnishee and twenty-five dollars (\$25.00) for any subsequent application for a writ to the same garnishee. In the case of garnishments, the court may also award service fees as prescribed by the applicable board of county commissioners pursuant to [section 11-729, Idaho Code](#).

(2) In the case of a contested judgment, if a party taking extraordinary collection action against a patient prevails against a patient and incurs costs, expenses, and fees, including attorney's fees, that are grossly disproportionate to the award amounts set forth in subsection (1)(b) of this section, then the party may petition the court for a supplemental award for costs, expenses, and fees. Upon an affirmative showing that the incurred costs, expenses, and fees are grossly disproportionate to the award amounts set forth in subsection (1)(b) of this section, and that fees were incurred

because of the patient's willful attempt to avoid paying a bona fide debt, then the court may take into account the factors outlined in [rule 54\(e\)\(3\) of the Idaho rules of civil procedure](#) and may, in its discretion, award supplemental costs, expenses, and reasonable attorney's fees.

(3) Notwithstanding any provision of law or agreement to the contrary, if a patient in a contested judgment is a prevailing party, then the patient shall be entitled to recover from a nonprevailing party all costs, expenses, and fees, including attorney's fees, incurred by the patient in contesting the action, and the patient shall have no liability to any nonprevailing parties for any costs, expenses, and fees, including attorney's fees and prejudgment interest incurred by a nonprevailing party.

**History.**

[I.C., § 48-305](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-305 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-306. Extraordinary collection after untimely notice — Limitation.** [Effective January 1, 2021.]. — If a party is unable to engage in an extraordinary collection action because the health care provider or health care facility failed to meet the timing requirements of section 48-304(1) or (2), Idaho Code, but complies with such timing requirements within either an additional forty-five (45) days for failure to meet the timing requirements of [section 48-304\(1\), Idaho Code](#), or an additional ninety (90) days for failure to meet the timing requirements of [section 48-304\(2\), Idaho Code](#), then as long as all other requirements of [section 48-304, Idaho Code](#), have been satisfied, such party may commence an extraordinary collection action. Notwithstanding any provision of law or agreement to the contrary, in any such collection action, the patient shall have no liability for costs, expenses, and fees, including attorney's fees.

**History.**

[I.C., § 48-306](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-306 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.



**§ 48-307. Burden of proof. [Effective January 1, 2021].** — Any person seeking to engage in an extraordinary collection action bears the burden of establishing that the requirements of sections 48-304 and 48-306, Idaho Code, if applicable, have been satisfied prior to engaging in any extraordinary collection action. Any party commencing a judicial action against a patient must plead with particularity its compliance with each requirement of sections 48-304 and 48-306, Idaho Code, as the case may be.

**History.**

I.C., § 48-307, as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-307 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-308. Rebuttable presumption of receipt. [Effective January 1, 2021.].** — A patient shall be presumed to have received a consolidated summary of services or a final statement three (3) days after the document has been sent by first class mail to the patient's address confirmed by the patient during the patient's last visit to the health care provider or as updated by the patient in subsequent written or electronic communications. Nothing in this section shall be interpreted as precluding the patient from agreeing in writing to receive consolidated summaries of services or final statements via email or other electronic means.

**History.**

I.C., § 48-308, as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-308 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-309. Delivery of consolidated summary of services. [Effective January 1, 2021.].** — Notwithstanding any provision of law to the contrary in this chapter, a health care facility is not required to send a consolidated summary of services to a patient prior to engaging in extraordinary collection action if:

(1) The patient will receive a final statement from a single billing entity for all goods and services provided to the patient at that health care facility; (2) The patient was clearly informed in writing of the name, phone number, and address of the billing entity; and (3) The health care facility otherwise complies with all other provisions of [section 48-304, Idaho Code](#).

**History.**

[I.C., § 48-309](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-309 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-310. Contracted service. [Effective January 1, 2021].** — Nothing in this chapter prohibits a health care facility from authorizing a health care provider by contract to provide the consolidated summary of services required by [section 48-304\(2\), Idaho Code](#), on its behalf.

**History.**

[I.C., § 48-310](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-310 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-311. Enforcement and civil penalties. [Effective January 1, 2021].** — If any party takes any extraordinary collection action other than in accordance with section 48-304 or 48-306, Idaho Code, then:

(1) Notwithstanding any provision of law or agreement to the contrary, a patient shall have no liability to any party for any collection costs, expenses, and fees, including attorney's fees and prejudgment and postjudgment interest; (2) The party is liable to the patient in an amount equal to any actual damages sustained by the patient as a result of any failure to comply, or one thousand dollars (\$1,000), whichever is greater; and (3) Where a court finds a party has willfully or knowingly violated section 48-304 or 48-306, Idaho Code, the court may award up to three (3) times the amount of actual damages, or three thousand dollars (\$3,000), whichever is greater. In any successful action to enforce the liability set forth in this section, the patient shall be entitled to the costs of the action, together with reasonable attorney's fees, as determined by the court.

**History.**

I.C., § 48-311, as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-311 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.

**§ 48-312. Non-extraordinary collection actions. [Effective January 1, 2021.].** — Nothing in this chapter shall be interpreted to restrict the ability of any person to demand and collect payment for the principal amount of any medical goods or services by means other than extraordinary collection action, as defined in [section 48-303, Idaho Code](#).

**History.**

[I.C., § 48-312](#), as added by 2020, ch. 139, § 1, p. 426.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-312 was repealed. See Prior Laws, § 48-301.

**Effective Dates.**

Section 2 of S.L. 2020, ch. 139 provided that the act should take effect on and after January 1, 2021.



## Chapter 4

### UNFAIR SALES ACT

Sec.

48-401 — 48-413. [Repealed.]



Idaho Code § 48-401

**§ 48-401. Title of act. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 1, p. 427.

Idaho Code § 48-402

**§ 48-402. Declaration of policy and purpose. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 2, p. 427.

**§ 48-403. Definitions of terms. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 3, p. 427; am. 1941, ch. 117, § 1, p. 230; am. 1955, ch. 95, § 2, p. 211; am. 1955, ch. 234, § 8, p. 521.

Idaho Code § 48-404

**§ 48-404. Advertising or sales at less than cost contrary to public policy. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 4, p. 427; am. 1941, ch. 117, § 2, p. 230.

**§ 48-405. Penalty for advertising or selling merchandise at less than cost. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 5, p. 427; am. 1941, ch. 117, § 3, p. 230; am. 1955, ch. 95, § 3, p. 211.

Idaho Code § 48-405A

**§ 48-405A. Limitation of quantity of items offered for sale at retail prohibited. [Repealed.]**

Repealed by S.L. 2009, ch. 146, § 1.

**History.**

**I.C., § 48-405A**, as added by 1969, ch. 239, § 2, p. 755.

**§ 48-406. Injunctions. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

I.C., § 48-406, as added by 1955, ch. 95, § 4, p. 211; am. 2012, ch. 20, § 22, p. 66; am. 2013, ch. 187, § 8, p. 447.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-406, which comprised S.L. 1939, ch. 209, § 6, p. 427; am. 1941, ch. 117, § 4, p. 230; am. 1945, ch. 206, § 1, p. 387, was repealed by S.L. 1955, ch. 95, § 1, p. 211.

Idaho Code § 48-407

**§ 48-407. Exempted sales. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 7, p. 427; am. 1941, ch. 117, § 5, p. 230.



Idaho Code § 48-408

**§ 48-408. Supervision and administration of act by governor.  
[Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

**I.C., § 48-408**, as added by 1955, ch. 95, § 5, p. 211.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-408, which comprised S.L. 1939, ch. 209, § 8, p. 427; am. 1941, ch. 117, § 6, p. 230; am. 1945, ch. 206, § 2, p. 387, was repealed by S.L. 1955, ch. 95, § 1, p. 211.

**§ 48-409. Witnesses — Exemption from prosecution based upon testimony. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 9, as added by 1941, ch. 117, § 7, p. 230.

**§ 48-410. Levy and collection of Idaho development and publicity fund tax — Appropriation and disbursements. [Repealed.]**

S.L. 1978, ch. 181, § 1, effective on and after January 1, 1979.

**History.**

S.L. 1939, ch. 209, § 10, as added by S.L. 1941, ch. 117, § 7, p. 230; am. 1955, ch. 95, § 6, p. 211; am. 1955, ch. 234, § 9, p. 521; am. 1961, ch. 150, § 1, p. 216.

Idaho Code § 48-411

**§ 48-411. Separability. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

1939, ch. 209, § 12, as added by 1941, ch. 117, § 7, p. 230.

Idaho Code § 48-412

**§ 48-412. Deceptive advertising as unfair competition. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

I.C., § 48-412, as added by 1959, ch. 158, § 1, p. 379.

Idaho Code § 48-413

**§ 48-413. Rebates unlawful. [Repealed.]**

Repealed by S.L. 2018, ch. 179, § 1, effective July 1, 2018.

**History.**

I.C., § 48-413, as added by 1963, ch. 144, § 1, p. 419.



## Chapter 5

### REGISTRATION AND PROTECTION OF TRADEMARKS

Sec.

48-501. Definitions.

48-502. Registrability.

48-503. Application for registration.

48-504. Filing of applications.

48-505. Certificate of registration.

48-506. Duration and renewal.

48-507. Assignments, amendments, changes of name and other instruments.

48-508. Records.

48-509. Cancellation.

48-510. Classification.

48-511. Fraudulent registration.

48-512. Infringement.

48-513. Injury to business reputation — Dilution.

48-514. Remedies.

48-515. Forum for actions regarding registration — Service on out-of-state registrants.

48-516. Common law rights.

48-517. Fees.

48-518. Time of taking effect — Repeal of prior acts — Intent of act.



**§ 48-501. Definitions.** — Whenever used in this chapter:

(1) “Abandoned” shall mean when either of the following occurs:

(a) When the use of the mark has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two (2) consecutive years shall constitute prima facie evidence of abandonment.

(b) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(2) “Applicant” shall mean the person filing an application for registration of a mark under this act, and the legal representatives, successors, or assigns of such person.

(3) “Certification mark” shall mean any word, name, symbol or device or any combination thereof: (a) used by a person other than its owner, or (b) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such person’s goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) “Collective mark” shall mean a trademark or service mark: (a) used by the members of a cooperative, an association, or other collective group or organization; or (b) which such cooperative association or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter, and includes marks indicating membership in a union, an association or other organization.

(5) “Dilution” shall mean the lessening of the capacity of registrant’s mark to identify and distinguish goods or services, regardless of the presence or absence of: (a) competition between the parties, or (b) likelihood of confusion, mistake or deception.

(6) “Juristic person” shall mean a firm, partnership, corporation, limited liability company or partnership, union, association, or other organization capable of suing and being sued in a court of law.

(7) “Mark” shall mean any trademark, service mark, collective mark or certification mark entitled to registration under this act whether registered or not.

(8) “Person” shall mean the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this act and includes a juristic person as well as a natural person.

(9) “Registrant” shall mean the person to whom the registration of a mark under this act is issued, and the legal representatives, successors or assigns of such person.

(10) “Service mark” shall mean any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of one (1) person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(11) “Trademark” shall mean any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

(12) “Trade name” shall mean any name used by a person to identify a business or vocation of such person.

(13) “Use” shall mean the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this act, a mark shall be deemed to be in use: (a) on goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported

in commerce in this state; and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

**History.**

**I.C., § 48-501**, as added by 1996, ch. 404, § 2, p. 1336; am. 1999, ch. 168, § 2, p. 455.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-501, which comprised 1965, ch. 305, § 1, p. 809; am. 1984, ch. 56, § 1, p. 95, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**RESEARCH REFERENCES**

**A.L.R.** — What constitutes “famous mark” for purposes of federal Trademark Dilution Act, **15 U.S.C. § 1125(c)**, which provides remedies for dilution of famous marks. **165 A.L.R. Fed. 625**.

**§ 48-502. Registrability.** — (1) In order to be registered, a mark must have some element of distinctiveness, arbitrariness or uniqueness, which may be inherent to the mark or acquired through extended usage and establishment of a reputation.

(2) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

- (a) Consists of or comprises immoral, deceptive or scandalous matter; or
- (b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or
- (c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- (d) Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent;
- (e) Consists of a mark which: (i) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; or (ii) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or (iii) is primarily merely a surname, provided however, that nothing in this subsection shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five (5) years before the date on which the claim of distinctiveness is made; or
- (f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

**History.**

I.C., § 48-502, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES****Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-502, which comprised 1965, ch. 305, § 2, p. 809; am. 1984, ch. 56, § 2, p. 95, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**RESEARCH REFERENCES**

**A.L.R.** — Construction and Application of Trademark Registration Prohibition on Disparaging Marks Under 15 U.S.C. § 1052(a). 15 A.L.R. Fed. 3d 8.

**§ 48-503. Application for registration.** — Subject to the limitations set forth in this act, any person who uses a mark may file in the office of the secretary of state, in a form prescribed by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, limited liability company or partnership, the state of domestication, and if a partnership, the names of the general partners, as specified by the secretary of state;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

The secretary of state may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

The application shall be signed by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a drawing or one (1) specimen showing the mark as actually used, complying with such requirements as the secretary of state may specify.

The application shall be accompanied by the application fee payable to the secretary of state.

**History.**

I.C., § 48-503, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-503, which comprised 1965, ch. 305, § 3, p. 809; am. 1984, ch. 56, § 3, p. 95, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” in the first paragraph refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

For further information on the United States patent and trademark office, referred to in the undesignated paragraph following subsection (4), see <https://www.uspto.gov>.

**§ 48-504. Filing of applications.** — (1) Upon the receipt of an application for registration and payment of the application fee, the secretary of state shall cause the application to be examined for conformity with this chapter.

(2) The applicant shall provide any additional pertinent information requested by the secretary of state including a description of a design mark and may make, or authorize the secretary of state to make, such amendments to the application as may be reasonably requested by the secretary of state or deemed by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary of state may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary of state upon the application submitted by the applicant upon the applicant's agreement, or the secretary of state may require a fresh application.

(5) If the applicant is found not to be entitled to registration, the secretary of state shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary of state in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until: (a) the secretary of state finally refuses registration of the mark; or (b) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(6) If the secretary of state finally refuses registration of the mark, the applicant may appeal the denial of such registration to the district court in and for Ada county. The court may compel registration of the mark, but



without cost to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) In the instance of applications concurrently being processed by the secretary of state which seek registration of the same or confusingly similar marks for the same or related goods or services, the secretary of state shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of [section 48-509, Idaho Code](#).

### **History.**

[I.C., § 48-504](#), as added by 1996, ch. 404, § 2, p. 1336; am. 2012, ch. 322, § 1, p. 881.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 48-504, which comprised 1965, ch. 305, § 4, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

### **Amendments.**

The 2012 amendment, by ch. 322, in subsection (1), substituted “receipt” for “filing”, “shall cause” for “may cause”, and “this chapter” for “this act.”

**§ 48-505. Certificate of registration.** — Upon compliance by the applicant with the requirements of this act, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, for a corporation, limited liability company or partnership, the state of domestication, and if a partnership, the names of the general partners, as specified by the secretary of state, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

**History.**

I.C., § 48-505, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-505, which comprised 1965, ch. 305, § 5, p. 809; am. 1984, ch. 56, § 4, p. 95, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” in the first sentence in the first paragraph refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**§ 48-506. Duration and renewal.** — (1) A registration of mark hereunder shall be effective for a term of ten (10) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term in a manner complying with the rules of the secretary of state, the registration may be renewed for a like term from the end of the expiring term.

(2) A renewal fee, payable to the secretary of state, shall accompany the application for renewal of the registration. When a renewal application includes goods or services which fall within multiple classes, the secretary of state may require payment of a fee for each class.

(3) A registration may be renewed for successive periods of ten (10) years in like manner and the secretary of state shall issue a certificate of renewal.

(4) Any registration in force on the date on which this act shall become effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the secretary of state in compliance with the rules of the secretary of state upon payment of the renewal fee within six (6) months prior to the expiration of the registration.

(5) All applications for renewal under this act, whether of registrations made under this act or of registrations effected under any prior act, shall include a statement that the mark has been and is still in use.

### **History.**

**I.C., § 48-506**, as added by 1996, ch. 404, § 2, p. 1336; am. 2005, ch. 273, § 1, p. 841.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 48-506, which comprised 1965, ch. 305, § 6, p. 809; am. 1984, ch. 56, § 5, p. 95, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” throughout the last paragraph refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

The phrase “on the date on which this act shall become effective” in subsection (4) refers to the effective date of S.L. 1996, Chapter 404, which was July 1, 1996.

**§ 48-507. Assignments, amendments, changes of name and other instruments.** — (1) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be filed with the secretary of state on a form provided by the secretary of state, upon the payment of the fee provided in [section 48-517, Idaho Code](#), payable to the secretary of state who, upon filing of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is filed with the secretary of state within three (3) months after the date thereof or prior to such subsequent purchase.

(2) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may file an application for amendment with the secretary of state upon the payment of the filing fee. The secretary of state may issue to the owner a certificate of amendment of registration for the remainder of the term of the registration or last renewal thereof.

(3) Other instruments which relate to a mark registered or application pending pursuant to this act, such as, by way of example, licenses, security interests or mortgages, may be filed in the discretion of the secretary of state pursuant to rule, provided that such instrument is in writing and duly executed.

(4) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when filed by the secretary of state, the record shall be prima facie evidence of execution.

(5) A photocopy of any instrument referred to in subsection (1), (2), or (3) of this section, shall be accepted for filing.

#### **History.**

[I.C., § 48-507](#), as added by 1996, ch. 404, § 2, p. 1336.

## STATUTORY NOTES

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 48-507, which comprised 1965, ch. 305, § 7, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

### **Compiler's Notes.**

The term “this act” in subsections (1) and (3) refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

## RESEARCH REFERENCES

**ALR.** — Liability of transferor of business operated under trade-name for supplies furnished to successor by one without notice of transfer. [70 A.L.R.3d 1250](#).

**§ 48-508. Records.** — The secretary of state shall keep for public examination a record of all marks registered or renewed under this act, as well as a record of all documents filed pursuant to [section 48-507, Idaho Code](#), until disposed of in accordance with chapter 57, title 67, Idaho Code.

**History.**

[I.C., § 48-508](#), as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-508, which comprised 1965, ch. 305, § 8, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” near the middle of the section refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.



**§ 48-509. Cancellation.** — The secretary of state shall cancel from the register, in whole or in part:

(1) Any registration concerning which the secretary of state receives a voluntary request for cancellation from the registrant or the assignee of record; (2) All registrations granted under this act and not renewed in accordance with the provisions of this chapter; (3) Any registration concerning which a court of competent jurisdiction shall find that: (a) The registered mark has been abandoned; (b) The registrant is not the owner of the mark; (c) The registration was granted improperly; (d) The registration was obtained fraudulently; (e) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it was registered; (f) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in this state prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; or (4) When a court of competent jurisdiction orders cancellation of a registration on any ground.

**History.**

I.C., § 48-509, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-509, which comprised 1965, ch. 305, § 9, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” in subsection (2) refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**§ 48-510. Classification.** — The secretary of state shall use the international classification of goods and services for convenience of administration of this act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practicable, the classification of goods and services shall conform to the classification adopted by the United States patent and trademark office. Applications for renewal shall be filed using the international classification of goods and services. A renewed registration shall be issued by the secretary of state, under the international classification of goods and services, if such renewal would not expand the registrant's rights.

**History.**

I.C., § 48-510, as added by 1996, ch. 404, § 2, p. 1336; am. 2012, ch. 322, § 2, p. 881.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-510, which comprised 1965, ch. 305, § 10, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Amendments.**

The 2012 amendment, by ch. 322, substituted “should conform” for “shall conform” in the third sentence, and rewrote the fourth and fifth sentences which formerly read: “Applications for renewal shall be filed using the classification of goods and services in effect when the trademark was approved by the secretary of state; provided that a registrant may

request a renewed registration to be issued under the international classification of goods and services. When such a request is made, the secretary of state shall issue the renewed certificate as requested by the registrant if such renewal would not extend the registrant's rights."

**Compiler's Notes.**

The term "this act" in the first sentence refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

For further information on the United States patent and trademark office, referred to in the third sentence, see <https://www.uspto.gov>.

For further information on the international classification of goods and services, referred to in the fourth sentence, see <https://www.wipo.int/classifications/nice/en>.

**RESEARCH REFERENCES**

**ALR.** — Application of defense of laches in action to cancel trademark.  
[64 A.L.R. Fed. 2d 255](#).

**§ 48-511. Fraudulent registration.** — Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

**History.**

I.C., § 48-511, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 48-511, which comprised 1965, ch. 305, § 11, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**§ 48-512. Infringement.** — Subject to the provisions of [section 48-516, Idaho Code](#), any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this act in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services, shall be liable in a civil action by the registrant for any and all of the remedies provided in [section 48-514, Idaho Code](#), except that under this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

**History.**

[I.C., § 48-512](#), as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-512, which comprised 1965, ch. 305, § 12, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term “this act” in subsection (1) refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**CASE NOTES**

**Likelihood of Confusion.**

In an action by a veterinarian against a national pet store chain for trademark infringement related to the phrase, “Where Pets are Family,” the court found no likelihood of confusion and, therefore, granted summary judgment to the pet store chain; although the parties indisputably sold related goods and services and the pet store chain’s extensive advertising gave it the ability to overwhelm any public recognition and goodwill that the veterinarian had developed in the mark, the court noted that both parties use the trademark merely as a tagline to their distinctive business names, that their marketing efforts were concentrated in different media, that there was no evidence of actual confusion, and reasonably attentive pet owners should be particularly attentive in selecting a veterinarian for their family pets and, thus, were likely to perceive the differences between a veterinary clinic and the pet store chain. [Cohn v. Petsmart, Inc., 281 F.3d 837 \(9th Cir. 2002\)](#).

## RESEARCH REFERENCES

**ALR.** — World wide web domain as violating state trademark protection statute or state unfair trade practices act. [96 A.L.R.5th 1](#).

Validity, construction, and application of state trademark counterfeiting statutes. [63 A.L.R.6th 303](#).

Parody as trademark or tradename dilution or infringement. [179 A.L.R. Fed. 181](#).

Initial interest confusion doctrine under [Lanham Trademark Act](#). [183 A.L.R. Fed. 553](#).

Application of doctrine of “reverse passing off” under [Lanham Act](#). [194 A.L.R. Fed. 175](#).

Lanham Act trademark infringement actions in internet and website context. [197 A.L.R. Fed. 17](#).

[Nominative Fair Use Defense in Trademark Law. 84 A.L.R. Fed. 2d 217.](#)

**§ 48-513. Injury to business reputation — Dilution.** — The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

(1) The degree of inherent or acquired distinctiveness of the mark in this state; (2) The duration and extent of use of the mark in connection with the goods and services; (3) The duration and extent of advertising and publicity of the mark in this state; (4) The geographical extent of the trading area in which the mark is used;

(5) The channels of trade for the goods or services with which the owner's mark is used; (6) The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state; and (7) The nature and extent of use of the same or similar mark by third parties.

The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the other remedies provided in this chapter, subject to the discretion of the court and the principles of equity.

### **History.**

I.C., § 48-513, as added by 1996, ch. 404, § 2, p. 1336.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 48-513, which comprised 1965, ch. 305, § 13, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

## **RESEARCH REFERENCES**

**ALR.** — World wide web domain as violating state trademark protection statute or state unfair trade practices act. 96 A.L.R.5th 1.

What constitutes “famous mark” for purposes of federal Trademark Dilution Act, 15 U.S.C. § 1125(c), which provides remedies for dilution of famous marks. 165 A.L.R. Fed. 625.



**§ 48-514. Remedies.** — Any owner of a mark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and all damages suffered by reason of such wrongful manufacture, use, display or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three (3) times such profits and damages and may award reasonable attorney's fees and costs of suit to the prevailing party in such cases where the court finds the other party committed the wrongful acts with knowledge or in bad faith or otherwise, as the circumstances of the case may warrant.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any criminal law of this state.

**History.**

I.C., § 48-514, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-514, which comprised 1965, ch. 305, § 14, p. 809, was repealed by S.L. 1996, ch. 404, § 1, effective July 1, 1996.

**Compiler's Notes.**

The term "this act" in the first sentence in the first paragraph refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**§ 48-515. Forum for actions regarding registration — Service on out-of-state registrants.** — (1) Actions to require cancellation of a mark registered pursuant to this act or to appeal the denial of registration of a mark pursuant to this act shall be brought in the district court in and for Ada county. In an action to compel registration, the proceeding shall be based solely upon the record before the secretary of state. In an action for cancellation, the secretary of state shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary of state as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under the Idaho rules of civil procedure.

**History.**

I.C., § 48-515, as added by 1996, ch. 404, § 2, p. 1336.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The term “this act” in the first sentence in subsection (1) refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

**§ 48-516. Common law rights.** — Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

**History.**

I.C., § 48-516, as added by 1996, ch. 404, § 2, p. 1336.

**§ 48-517. Fees.** — The secretary of state shall charge thirty dollars (\$30.00) for the various applications and filing fees required in this chapter and for related services. The application fee payable herein shall be refunded if the registration for a mark is not granted.

**History.**

**I.C., § 48-517**, as added by 1996, ch. 404, § 2, p. 1336; am. 1999, ch. 211, § 2, p. 562.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 48-518. Time of taking effect — Repeal of prior acts — Intent of act.** — This act shall be in force and effect on July 1, 1996, but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this act, provided that as to any application, suit, proceeding or appeal, and for that purpose only, pending at the time this act takes effect the repeal shall be deemed not to be effective until final determination of said pending application, suit, proceeding or appeal.

The intent of this act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the trademark act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this act.

#### **History.**

I.C., § 48-518, as added by 1996, ch. 404, § 2, p. 1336.

### **STATUTORY NOTES**

#### **Federal References.**

The trademark act of 1946, referred to in the second paragraph, is generally compiled as [15 U.S.C.S. § 1051 et seq.](#)

#### **Compiler's Notes.**

The term “this act” throughout the section refers to S.L. 1996, Chapter 404, which is compiled as §§ 48-501 to 48-518.

The phrase “the effective date of this act” in the first paragraph refers to the effective date of S.L. 1996, Chapter 404, which was effective July 1, 1996.



## Chapter 6

### CONSUMER PROTECTION ACT

Sec.

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48-616. Forfeiture of corporate franchise.

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48-618. Construction of chapter.

48-619. Limitation of action.



**§ 48-601. Short title and purpose.** — This act shall be known and may be cited as the “Idaho consumer protection act”. The purpose of this act is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection. It is the intention of the legislature that this chapter be remedial and be so construed.

**History.**

1971, ch. 181, § 2, p. 847; am. 1990, ch. 273, § 1, p. 766.

**STATUTORY NOTES**

**Cross References.**

Chain or pyramid distributor schemes, prohibited, penalties, § 18-3101.

**Prior Laws.**

Former Chapter 6 which comprised S.L. 1965, ch. 293, §§ 1 to 6, was repealed by S.L. 1971, ch. 181, § 1.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

**CASE NOTES**

[Application.](#)

[Collection of debts.](#)

[In general.](#)

[Instruction.](#)

[— Harmless error.](#)

Legislative intent.

Medical malpractice.

Price negotiations.

Statutory damages.

Written sales presentation.

### **Application.**

The Idaho consumer protection act does not expressly include or exclude commercial transactions and is applicable to protect the ultimate consumer of a product, who intends to use it in a for-profit business. *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of “goods” in § 48-602(6) and its sale was “trade” or “commerce.” *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

### **Collection of Debts.**

The collection of debts arising from sales of goods and services is subject to the provisions of this chapter. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **In General.**

This chapter prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce within the State of Idaho. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Instruction.**

#### **— Harmless Error.**

Where, although the jury was not instructed under this chapter, it was instructed regarding the common law fraud claims and the plaintiffs presented no sound basis for a jury to reach a different result under this chapter, the court’s refusal to present a claim under this chapter to the jury,

even if error, constituted harmless error. *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

### **Legislative Intent.**

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **Medical Malpractice.**

Plaintiffs must proceed in a medical malpractice action under the negligence standard set forth in § 6-1012; therefore, the plaintiffs could not bring a cause of action under this chapter for the defendants failure to provide adequate health care after holding themselves out as being knowledgeable and capable of providing adequate health care. *Keyser v. St. Mary's Hosp.*, 662 F. Supp. 191 (D. Idaho 1987).

### **Price Negotiations.**

Where the testimony of 15 consumers and two salesmen for a water conditioner salesman indicated that no price negotiations or bargaining occurred during the sale of water conditioner units, and other evidence indicated that all the units sold in the state were sold at the same so-called special discount price, the evidence did not support the trial court's finding that the price of the water conditioners was subject to negotiation or bargaining. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Statutory Damages.**

In a property sale dispute, the trial court's failure to award statutory damages for a violation of this chapter was error. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

### **Written Sales Presentation.**

Where in an action brought by the attorney general under this chapter, 15 consumers testified that they purchased water conditioner units from salesmen who read verbatim from a written script prepared by the manufacturer or that the salesmen delivered what appeared to be a memorized sales presentation, and several salesmen testified that the written

sales presentation was used in all their sales, the evidence did not support the trial court's finding that the complaints of the individual consumers who testified at the trial could not be correlated with all sales made by the defendants. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Cited** *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001); *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 329 P.3d 356 (2014).

## RESEARCH REFERENCES

**ALR.** — Practices forbidden by state deceptive trade practice and consumer protection acts — Pyramid or Ponzi or referral sales schemes. 48 *A.L.R.6th* 511.

Judicial Remedies for Proceeds and Funds from *Ponzi Schemes*. 100 *A.L.R.6th* 281.

**§ 48-602. Definitions.** — As used in this act:

(1) “Person” means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, trusts, business entities, and any other legal entity, or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative or servant thereof.

(2) “Trade” and “commerce” mean the advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.

(3) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription or other tangible document or recording.

(4) “Examination” of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(5) “Appropriate trade premises,” mean premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(6) “Goods” mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, including certificates or coupons exchangeable for such goods.

(7) “Services” mean work, labor or any other act or practice provided or performed by a seller to or on behalf of a consumer.

(8) “Actions or transactions permitted under laws administered by a regulatory body or officer” mean specific acts, practices or transactions

authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.

(9) “Regulatory body or officer” means any person or governmental entity with authority to act pursuant to state of Idaho or federal statute.

### **History.**

1971, ch. 181, § 3, p. 847; am. 1973, ch. 285, § 1, p. 601; am. 1993, ch. 102, § 1, p. 256.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 48-602 was repealed. See Prior Laws, § 48-601.

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

## **CASE NOTES**

### **Misrepresentations.**

“Sale” as crucial event.

Trade.

### **Misrepresentations.**

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines’ failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the metes and bounds description in the contract. *Fenn v. Noah*, 142 Idaho 775, 133 P.3d 1240 (2006).

“Sale” As Crucial Event.

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to the provisions of this chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **Trade.**

The company, which specialized in purchasing structured personal injury and other settlement payment streams for cash and then reselling the settlements or annuities for a profit, engaged in trade or commerce as provided under subsection (2) of this section, where the company attempted to purchase annuity payments for profit, and where the company advertised its product through use of television commercials. *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of “goods” and its sale was “trade” or “commerce.” *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

**Cited** *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988); *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 329 P.3d 356 (2014).

**§ 48-603. Unfair methods and practices.** — The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

- (1) Passing off goods or services as those of another;
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertising goods or services with intent not to sell them as advertised;
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;



(12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;

(13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;

(14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;

(15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;

(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in [section 48-603C, Idaho Code](#), provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in [section 28-41-301, Idaho Code](#);

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, [42 U.S.C. section 5121 et seq.](#), by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

- (a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;
- (b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;
- (c) The duration of the disaster or emergency declaration.

Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

### **History.**

1971, ch. 181, § 4, p. 847; am. 1973, ch. 285, § 2, p. 601; am. 1990, ch. 273, § 2, p. 766; am. 2002, ch. 358, § 1, p. 1015; am. 2002, ch. 361, § 2, p. 1019; am. 2013, ch. 54, § 16, p. 108.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 48-603 was repealed. See Prior Laws, § 48-601.

### **Amendments.**

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment by ch. 358, § 1, effective July 1, 2002, in subsection (19), inserted “to the ultimate consumer” following “by selling or offering to sell”, substituted “pharmaceuticals” for “medicine” following “fuel or food”; added “In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances, including, but not limited to:”; added subsections 19(a), (b), (c); and added the last sentence.

The 2002 amendment by ch. 361, § 2, effective March 27, 2002, added the semicolon at the end of subsection (18) and added subsection (19).

The 2013 amendment, by ch. 54, deleted “subsection (37) of” preceding “[section 28-41-301, Idaho Code](#)” near the end of subsection (18).

## **Legislative Intent.**

Section 1 of S.L. 2002, ch. 361 provides: “The Legislature finds that during emergencies or disasters, some persons may take unfair advantage of consumers by greatly increasing prices for essential goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited.”

## **Compiler’s Notes.**

The term “this act” in the last paragraph refers to S.L. 2002, Chapter 358, which is compiled as this section only. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

## **CASE NOTES**

Contract or other document.

— Failure to deliver.

Employer’s violations.

Goods.

Legislative intent.

Liability for sales program.

Misrepresentations.

“Sale” as crucial event.

Services.

Tendency to deceive.

Trade names.

Unconscionable conduct.

**Contract or Other Document.**

**— Failure to Deliver.**

Insurance company's failure to give insured a copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the purchase of insurance through an insurance agency which is a sale explicitly excluded from this chapter. *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

### **Employer's Violations.**

District court did not err by granting the former employer summary judgment on a former at-will employee's claim that she was terminated in violation of public policy, based on the employer's alleged violations of the Idaho Consumer Protection Act, because the employee failed to establish that she was engaged in a protected activity, and she failed to identify any specific instance of her own refusal to engage in an illegal act. *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 329 P.3d 356 (2014).

### **Goods.**

Although "goods" defined under the act include intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was "purchase of goods." *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

### **Legislative Intent.**

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **Liability for Sales Program.**

Where Master Manufacturing Company created and furnished the sales program utilized by Master Distributors in Idaho, participated in the hiring and training of Master Distributors' sales personnel, was involved on a nearly daily basis with the ongoing operation of the sales program in Idaho, and knowingly distributed its products in Idaho through Master Distributors, Inc., Master Manufacturing Company was subject to liability under this chapter for any unfair or deceptive practices utilized in the Idaho sales program. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

## **Misrepresentations.**

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines' failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the metes and bounds description in the contract. *Fenn v. Noah*, 142 Idaho 775, 133 P.3d 1240 (2006).

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under § 48-608(1); moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

## **“Sale” as Crucial Event.**

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to the provisions of the chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

## **Services.**

Trial court erred in dismissing an owner's complaint for failure to prove liability and the owner was entitled to compensatory damages and attorneys' fees, because the district court found that there was a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages and he was not required to prove liability where his allegations for breach of contract and violation of the Idaho Consumer Protection Act were admitted by an agent and his company as being true. *Pierce v. McMullen*, 156 Idaho 465, 328 P.3d 445 (2014).

## **Tendency to Deceive.**

An act or practice is unfair if it is shown to possess a tendency or capacity to deceive consumers, and neither proof of an intention to deceive nor any actual damage to the public need be shown in order to establish a

trade practice as unfair or deceptive. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Trade Names.**

The unauthorized advertising, display and/or sale by defendant of merchandise bearing plaintiffs' "private label" trade-names and/or trademarks constituted unfair and deceptive trade practices in violation of this section. *J.C. Penney Co. v. Parrish Co.*, 339 F. Supp. 726 (D. Idaho 1972).

### **Unconscionable Conduct.**

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; price-fixing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

Well driller misled landowners by providing them with unneeded drilling services; the well was drilled much deeper than necessary and the driller continued to drill after encountering low temperature geothermal conditions which were not appropriate for a cold water domestic use well. *Duspiva v. Fillmore*, 154 Idaho 27, 293 P.3d 651 (2013).

The selling of gift cards or vouchers with expiration dates clearly marked on them was not fraudulent, deceptive, or misrepresentative in any manner. *Doble v. Interstate Amusements, Inc.*, 160 Idaho 307, 372 P.3d 362 (2016), cert. denied, — U.S. —, 137 S. Ct. 343, 196 L. Ed. 2d 263 (2016).

**Cited** *McNeil v. Gisler*, 100 Idaho 693, 604 P.2d 707 (1979); *Yellow Pine Water User's Ass'n v. Imel*, 105 Idaho 349, 670 P.2d 54 (1983); *Telford v. Smith County*, 155 Idaho 497, 314 P.3d 179 (2013).

## **RESEARCH REFERENCES**

**ALR.** — World wide web domain as violating state trademark protection statute or state unfair trade practices act. 96 A.L.R.5th 1.

Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 83 A.L.R.6th 419.

**§ 48-603A. Unfair solicitation practices.** — (1) It is unlawful for any person to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

- (a) Stating the identity of the person making the solicitation;
- (b) Stating the trade name of the person represented by the person making the solicitation;
- (c) Stating the kind of goods or services being offered for sale;
- (d) And, in the case of an “in person” contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (a), (b) and (c) of this section, show or display identification which states the information required by paragraphs (a) and (b) of this section as well as the address of the place of business of one (1) of such persons so identified.

(2) It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at other than his appropriate trade premises, in person or by telephone, to use any plan, scheme, or ruse which misrepresents his true status or mission for the purpose of making such sale or order for the sale of goods or services.

(3) It is unlawful in the sale or offering for sale of goods or services for any person conducting a mail order or catalog business in this state and utilizing a post office box address to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms.

### **History.**

I. C., § 48-603A, as added by 1973, ch. 285, § 3, p. 601.



**§ 48-603B. Unfair tax return preparation practices.** — (1) As used in this section, unless the context otherwise requires:

(a) “Tax preparer” means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) “Fee” means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3)(a) It is unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent therefor, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document.

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4)(a) It is unlawful for any person, including any individual, association, partnership, joint venture, or any employee or agent therefor, to fail to sign any state income tax return, or to fail to include his name, address, and social security number or preparer identification number issued under [26 U.S.C. 6109](#) on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

### **History.**

[I.C., § 48-603B](#), as added by 1973, ch. 285, § 4, p. 601; am. 1993, ch. 102, § 2, p. 256; am. 2000, ch. 26, § 2, p. 45.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

**§ 48-603C. Unconscionable methods, acts or practices.** — (1) Any unconscionable method, act or practice in the conduct of any trade or commerce violates the provisions of this chapter whether it occurs before, during, or after the conduct of the trade or commerce.

(2) In determining whether a method, act or practice is unconscionable, the following circumstances shall be taken into consideration by the court:

(a) Whether the alleged violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor;

(b) Whether, at the time the consumer transaction was entered into, the alleged violator knew or had reason to know that the price grossly exceeded the price at which similar goods or services were readily available in similar transactions by similar persons, although price alone is insufficient to prove an unconscionable method, act or practice;

(c) Whether the alleged violator knowingly or with reason to know, induced the consumer to enter into a transaction that was excessively one-sided in favor of the alleged violator;

(d) Whether the sales conduct or pattern of sales conduct would outrage or offend the public conscience, as determined by the court.

### **History.**

I.C., § 48-603C, as added by 1990, ch. 273, § 3, p. 766.

## **CASE NOTES**

### **Price Fixing.**

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; price-fixing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which addresses the

prevention of outrageous transactions involving vulnerable consumers.  
*State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

**Cited** *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001); *Garcia v. Absolute Bail Bonds, LLC*, 161 Idaho 616, 389 P.3d 161 (2016).

**§ 48-603D. Unfair telephone services — Unordered goods and services — Disclosure to consumers.** — (1) As used in this section:

(a) “Telecommunications provider” means a person that provides telecommunications service.

(b) “Telecommunications service” means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum. Telecommunications service does not include cable television service or broadcast service.

(c) “Telecommunications service agreement” means a contract between the telecommunications provider and a consumer for telecommunications service that is provided to the consumer on a continuing or periodic basis. The term includes an oral, written, or electronically recorded contract, and includes any material amendment to an existing contract.

(2)(a) **Section 48-605, Idaho Code**, notwithstanding, it is unlawful for a telecommunications provider to request a change in a consumer’s local exchange or interexchange carrier without the consumer’s verified consent.

(b) For purposes of subsection (2)(a) of this section:

(i) It is the responsibility of the telecommunications provider requesting a change in a telephone service subscriber’s local exchange or interexchange carrier to verify that the consumer has authorized the change. A telecommunications provider that does not verify a consumer’s change in his or her local exchange or interexchange carrier in accordance with the verification procedures, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of **47 CFR 64**, as those procedures are from time to time amended, commits an unlawful practice within the meaning of this act. A telephone company, wireless carrier or telecommunications carrier providing local exchange service who has been requested by another telecommunications provider to process a change in a consumer’s carrier is only liable under this

section if it knowingly participates in processing a requested change that is unauthorized or not properly verified; and

(ii) Compliance with applicable federal verification procedures is a complete defense to an allegation of consumer fraud under subsection (2)(a) of this section.

(3)(a) [Section 48-605, Idaho Code](#), notwithstanding, it is unlawful for a telecommunications provider to bill a consumer for goods or services that are in addition to the consumer's telecommunications services without the consumer's authorization adding the goods or services to the consumer's service order.

(b) For purposes of subsection (3)(a) of this section, a telephone company or telecommunications carrier providing billing services for another telecommunications provider is only liable under this section if it knowingly participates in billing a consumer for goods or services without the consumer's authorization for the addition of those goods or services to the consumer's service order.

(4)(a) A telecommunications provider shall be solely responsible for providing written notice to a consumer who has agreed to enter into a telecommunications service agreement with the telecommunications provider.

(b) The notice shall clearly and conspicuously disclose to the consumer that the consumer's local exchange or interexchange carrier has been changed. The notice shall also advise the consumer that the consumer may change back to the previous carrier or select a new carrier by calling the previous carrier or the consumer's preferred carrier. The notice shall also provide the consumer with a toll-free number to call for further information.

(c) The notice shall be sent on or before the fifteenth day after the consumer enters into the telecommunications service agreement, or on or before the day the telecommunications provider first bills the consumer under the agreement, whichever is later.

(d) The notice must be a separate document sent for the sole purpose of advising the consumer of his or her entering into a telecommunications

service agreement. The notice shall also not be combined with any sweepstakes entry form in the same document or other like inducement.

(e) The sending of this notice shall not constitute a defense to a charge that a consumer did not consent to enter into a telecommunications service agreement or that the consumer's consent was verified according to federal law.

(f) Compliance with the notification requirements, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, shall be deemed to be compliance with this subsection.

(g) A consumer who selects a different carrier within three (3) days after receiving the notice under subsection (4)(a) of this section may not be charged a cancellation charge or disconnect fee unless the consumer has more than five (5) telephone lines and has entered into a written agreement which specifies such charges and fees, and the telecommunications provider has complied with the verification procedures under subsection (2)(b) of this section.

### **History.**

I.C., § 48-603D, as added by 1998, ch. 274, § 1, p. 904.

## **STATUTORY NOTES**

### **Federal References.**

The telecommunications act of 1996, referred to in paragraph (2)(b)(i) and paragraph (4)(f), generally appears as 47 U.S.C.S. § 151.

### **Compiler's Notes.**

The term "this act" at the end of the second sentence in paragraph (2)(b)(i) refers to S.L. 1998, Chapter 274, which is codified as this section. The reference probably should be to "this chapter," being chapter 6, title 48, Idaho Code.

### **Effective Dates.**

Section 2 of S.L. 1998, ch. 274 declared an emergency. Approved March 24, 1998.

**§ 48-603E. Unfair bulk electronic mail advertisement practices. —**

(1) For purposes of this section, unless the context otherwise requires:

(a) “Bulk electronic mail advertisement” means an electronic message, containing the same or similar advertisement, which is contemporaneously transmitted to two (2) or more recipients, pursuant to an internet or intranet computer network.

(b) “Computer network” means a set of related, remotely connected devices and communication facilities, including two (2) or more computers, with the capability to transmit data among them through communication facilities.

(c) “Interactive computer service” means an information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated or services offered by a library or an educational institution.

(d) “Recipient” means a person who receives any bulk electronic mail advertisements.

(2) Any person who uses an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement shall provide an electronic mail address readily identifiable in the bulk electronic mail advertisement to which the recipient may send a request for declining such mail.

(3) It is unlawful for a person to use an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement to any recipient that the sender knows, or has reason to know, engages in any of the following:

(a) Uses the name of a fictitious name of a third party in the return address field without the permission of the third party.

(b) Misrepresents any information in identifying the point of origin of the transmission path of the bulk electronic mail advertisement.



(c) Fails to contain information identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(d) Sends or transmits, at any time after five (5) business days of a declination, any bulk electronic mail advertisement to a recipient who provided the sender with a request declining the receipt of such advertisements.

(4) Pursuant to [section 48-608, Idaho Code](#), a recipient that receives a bulk electronic mail advertisement in violation of this section may bring an action to recover actual damages. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such bulk electronic mail advertisement the greater of one hundred dollars (\$100) for each bulk electronic mail advertisement transmitted to the recipient in violation of this section or one thousand dollars (\$1,000).

(5) This section does not apply to any of the following:

(a) A person, including an interactive computer service, who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits bulk electronic mail advertisements on behalf of those users which the person knows, or should have known, were transmitted in violation of this section.

(b) Electronic mail advertisements which are accessed by the recipient from an electronic bulletin board.

(c) A person who provides users with access at no charge to electronic mail, including receiving and transmitting bulk electronic mail advertisements, and, as a condition of providing such access, requires such users to receive unsolicited advertisements.

(d) The transmission of bulk electronic mail advertisements from an organization or similar entity to the members of such organization.

(6) An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any bulk electronic mail advertisement which is reasonably believed to be in violation of this section.

**History.**

I.C., § 48-603E, as added by 2000, ch. 423, § 1, p. 1373.

**STATUTORY NOTES****Effective Dates.**

Section 2 of S.L. 2000, ch. 423, provided that the act shall be in full force and effect on and after July 1, 2000.

**RESEARCH REFERENCES**

**ALR.** — World wide web domain as violating state trademark protection statute or state unfair trade practices act. 96 A.L.R.5th 1.

Validity of state statutes and administrative regulations regulating internet communications under commerce clause and First Amendment of federal constitution. 98 A.L.R.5th 167.

Validity, construction, and application of federal and state statutes regulating unsolicited e-mail or “spam”. 10 A.L.R.6th 1.

**§ 48-603F. Mortgage loan modification fees.** — (1) For purposes of this section, unless the context otherwise requires:

(a) “Fee” means any item of value including, but not limited to, goods or services.

(b) “Loan modification activities” is defined in [section 26-31-201\(3\), Idaho Code](#).

(2) Charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed pursuant to chapter 20, title 54, Idaho Code, or licensed, exempt or excluded from licensing pursuant to part 2 or 3, chapter 31, title 26, Idaho Code.

**History.**

[I.C., § 48-603F](#), as added by 2011, ch. 323, § 3, p. 939.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 2011, ch. 323 provided: “This act shall be in full force and effect on and after September 1, 2011.”

**§ 48-604. Intent of legislature — Attorney general to make rules and regulations.** — (1) It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act ([15 U.S.C. 45\(a\)\(1\)](#)), as from time to time amended; and

(2) The attorney general may make rules and regulations interpreting the provisions of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the federal trade commission act ([15 U.S.C. 45\(a\)\(1\)](#)), as from time to time amended. Rules and regulations shall be promulgated as provided in chapter 52, title 67, Idaho Code.

**History.**

1971, ch. 181, § 5, p. 847; am. 1973, ch. 285, § 5, p. 601.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 48-604 was repealed. See Prior Laws, § 48-601.

**Compiler's Notes.**

The term “this act” in subsections (1) and (2) refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

The references enclosed in parentheses so appeared in the law as enacted.

**CASE NOTES**

## **Federal Law.**

Federal case law as it has developed under § 5(2)(1) of the Federal Trade Commission Act, although not binding, is persuasive in application of this chapter. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Cited** *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979); *Haskin v. Glass*, 102 Idaho 785, 640 P.2d 1186 (Ct. App. 1982); *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

**§ 48-605. Exceptions to chapter.** — Nothing in this act shall apply to:

(1) Actions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.

(2) Acts done by publishers, broadcasters, printers, retailers, or their employees, in the publication or dissemination of an advertisement in good faith on the basis of information or material supplied by others and without knowledge or reason to know of the misleading or deceptive character of such advertisement or the information or material furnished.

(3) Persons subject to chapter 13, title 41, Idaho Code (sections 41-1301 through 41-1327), defining, and providing for the determination by the director of the department of insurance of unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

**History.**

1971, ch. 181, § 6, p. 847.

**STATUTORY NOTES**

**Cross References.**

Director of department of insurance, § 41-202.

Public utilities commission, § 61-201.

**Prior Laws.**

Former § 48-605 was repealed. See Prior Laws, § 48-601.

**Compiler's Notes.**

The name of the commissioner of insurance has been changed to the director of the department of insurance on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 11, § 3 (§ 41-203).

The term “this act” in the introductory paragraph refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608

and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

The reference enclosed in parentheses so appeared in the law as enacted.

## **CASE NOTES**

### **Insurance.**

Insurance company’s failure to give insured a copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the purchase of insurance through an insurance agency which is a sale explicitly excluded from the act’s provisions. *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

**§ 48-606. Proceedings by attorney general.** — (1) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

- (a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;
- (b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;
- (c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;
- (d) To order specific performance by the violator;
- (e) To recover from the alleged violator civil penalties of up to five thousand dollars (\$5,000) per violation for violation of the provisions of this chapter; and
- (f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as



provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or a consent judgment as in this chapter provided.

(4) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars (\$5,000) per alleged violation; a stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in [section 48-615, Idaho Code](#).

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection fund which is hereby created in the state treasury. Moneys in the fund may be expended pursuant to legislative appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. At the beginning of each fiscal year, those moneys in the consumer protection fund which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by fifty percent (50%) or more shall be transferred to the general fund.

(6) Any moneys collected by the attorney general as trustee for distributions to injured consumers shall be deposited in the state treasury until such time as payment is made to an individual or individuals for purposes of restitution or pursuant to a court approved cy pres distribution.

**History.**

1971, ch. 181, § 7, p. 847; am. 1973, ch. 285, § 6, p. 601; am. 1990, ch. 273, § 4, p. 766; am. 1991, ch. 243, § 1, p. 592; am. 1993, ch. 102, § 3, p. 256; am. 2001, ch. 61, § 1, p. 112.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

General fund, § 67-1205.

**Prior Laws.**

Former § 48-606 was repealed. See Prior Laws, § 48-601.

**CASE NOTES****Notice of Proceedings.**

Where the trial court testimony indicated that the manufacturer of water conditioning units was kept informed about the complaints raised by the attorney general's office and the proceedings leading up to the execution of the assurance of voluntary compliance by the distributor of those units, and that the manufacturer approved changes made in the sales presentation script pursuant to the assurance, the attorney general's written notice to the distributor of the water conditioning units was adequate notice, under subsection (2) of this section, to the manufacturer that legal proceedings under this chapter were contemplated as a result of the sales program in which the manufacturer was involved. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**§ 48-607. Additional relief by court authorized.** — In any action brought by the attorney general, wherein the state prevails, the court shall, in addition to the relief granted pursuant to [section 48-606, Idaho Code](#), award reasonable costs, investigative expenses and attorney's fees to the attorney general. These costs and fees shall be remitted to the consumer protection account [consumer protection fund] created in [section 48-606, Idaho Code](#), and shall be used for the furtherance of the attorney general's duties and activities under this chapter. In addition, the court may:

(1) Make such orders or judgments as may be necessary to prevent the use or employment by a person of any method, act or practice declared to be a violation of the provisions of this chapter; (2) Make such orders or judgments as may be necessary to compensate any consumers for actual damages sustained or to provide for restitution to any consumers of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; (3) Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations; (4) Appoint a master, receiver or escrow agent to oversee assets or order sequestration of assets whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this subsection and assess the expenses of a master, receiver or escrow agent against the defendant; (5) Revoke any license or certificate authorizing that person to engage in business in this state; (6) Enjoin any person from engaging in business in this state; and/or (7) Grant other appropriate relief.

### **History.**

1971, ch. 181, § 8, p. 847; am. 1973, ch. 285, § 7, p. 601; am. 1990, ch. 273, § 5, p. 766.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Compiler's Notes.**

The bracketed insertion in the second sentence in the introductory paragraph was added by the compiler to correct the name of the referenced fund. See § 48-606.

## **CASE NOTES**

Burden of proof.

Discretion of court.

Interested consumers.

Restitution.

### **Burden of Proof.**

The state need not prove in a consumer protection action that consumers in fact relied upon deceptions or misrepresentations made by the defendant and that the defendant's acts were a proximate cause of the defendant's acquisition of moneys from consumers in order for the state to obtain restitutionary relief for Idaho consumers. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Discretion of Court.**

Restitution is not an automatic or mandatory remedy for violations of this chapter; the district court's discretion to award restitutionary relief should be exercised with a view toward the purposes of the chapter. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Interested Consumers.**

An order granting consumers restitutionary relief or permitting them to rescind their purchase agreements with a water conditioner distributor may be applied to all consumers affected by the same trade practices found by the court to be unfair or deceptive under this chapter, since equitable relief need not be limited to the consumer witnesses who testified at trial. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

### **Restitution.**

Restitutionary relief is appropriate in an action brought by the attorney general under this chapter, where such relief would be required to reestablish the status quo ante which existed prior to the defendant's deceptive or unfair acts. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Cited** *Yellow Pine Water User's Ass'n v. Imel*, 105 Idaho 349, 670 P.2d 54 (1983).

**§ 48-608. Loss from purchase or lease — Actual and punitive damages.** — (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater; provided, however, that in the case of a class action, the class may bring an action for actual damages or a total for the class that may not exceed one thousand dollars (\$1,000), whichever is the greater. Any such person or class may also seek restitution, an order enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

(2) An elderly person or a disabled person who brings an action under subsection (1) of this section shall, in addition to the remedies available under subsection (1) of this section, recover from the offending party an enhanced penalty of fifteen thousand dollars (\$15,000) or treble the actual damages, whichever is greater.

(a) In order to recover the enhanced penalty, the court must find that the offending party knew or should have known that his conduct was perpetrated against an elderly or disabled person and that his conduct caused one (1) of the following:

- (i) Loss or encumbrance of the elderly or disabled person's primary residence;
- (ii) Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;
- (iii) Loss of more than twenty-five percent (25%) of the funds belonging to the elderly or disabled person set aside by the elderly or

disabled person for retirement or for personal or family care or maintenance;

(iv) Loss of more than twenty-five percent (25%) of the monthly payments that the elderly or disabled person receives under a pension or retirement plan; or

(v) Loss of assets essential to the health or welfare of the elderly or disabled person.

(b) If the court orders restitution under subsection (1) of this section for a pecuniary or monetary loss suffered by an elderly or disabled person, the court shall require that the restitution be paid by the offending party before he pays the enhanced penalty imposed by this subsection.

(c) In this subsection:

(i) “Disabled person” means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one (1) major life activity.

(ii) “Elderly person” means a person who is at least sixty-two (62) years of age.

(iii) “Major life activity” means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(3) An action brought under subsection (1) of this section may be brought in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

(4) Upon commencement of any action brought under this section, the clerk of the court shall, for informational purposes only, mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

(5) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney’s fees to the plaintiff if he prevails. The court in its

discretion may award attorney's fees to a prevailing defendant if it finds that the plaintiff's action is spurious or brought for harassment purposes only.

(6) Any permanent injunction, judgment or order of the court made under section 48-606(1) through (3) or [section 48-607, Idaho Code](#), shall be admissible as evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by this chapter.

### **History.**

1971, ch. 181, § 9, p. 847; am. 1973, ch. 285, § 8, p. 601; am. 1990, ch. 273, § 6, p. 766; am. 2008, ch. 257, § 1, p. 749.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Amendments.**

The 2008 amendment, by ch. 257, in subsection (1), substituted "chapter" for "act"; and added subsection (2) and redesignated the remaining subsections accordingly.

## **CASE NOTES**

[Application.](#)

[Attorney's fees.](#)

[Basis for cause of actions.](#)

[Choice of remedies.](#)

[Damages.](#)

[Discretion of court.](#)

[Goods.](#)

[Payment of legal obligation.](#)

[Prevailing party.](#)



Repeated or flagrant violations.

Standard of proof.

Standing.

### **Application.**

In the 1990 session laws the legislature modified subsection (1) of this section in part by deleting the reference to the rules of civil procedure. No reason is indicated for the change. The supreme court of Idaho concluded that the rules still apply and that the modification was not intended to be removed from the rules actions pursued under subsection (1) of this section. *Shurtliff v. Northwest Pools, Inc.*, 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

Landowners did not treat their agreement with a well driller as void; they sought their alternative remedy for actual damages, which the court granted, and the district court did not treat the remedies as cumulative, but simply pointed out that the landowners would have been entitled to consider the agreement void had they so chosen. *Duspiva v. Fillmore*, 154 Idaho 27, 293 P.3d 651 (2013).

### **Attorney's Fees.**

In an action brought by a musician to recover royalties on music, attorney's fees recoverable where a default judgment was entered were limited to the amount stated in a complaint. *Holladay v. Lindsay*, 143 Idaho 767, 152 P.3d 638 (Ct. App. 2006).

Attorney fees were properly awarded by the trial court under against a creditor who brought a frivolous suit against his debtors' attorneys, and fees on appeal also were warranted because the appeal was brought spuriously and without foundation for the purpose of harassment. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

### **Basis for Cause of Actions.**

The language of subsection (1) of this section does not require that a purchase or lease be "completed" in order for an action to be brought; however, since no authority exists for applying this chapter to a merely contemplated transaction, a claim under this chapter involving the sale of

property must be based upon a sales contract. *Haskin v. Glass*, 102 Idaho 785, 640 P.2d 1186 (Ct. App. 1982).

### **Choice of Remedies.**

In an action to recover earnest money, where property seller alleged that the president of a real estate company violated this chapter and, thus, terminated his employment contract with the real estate company, seller had chosen his remedy under subsection (1) of this section and can not later sue to recover actual damages. *Knipe Land Co. v. Robertson*, 151 Idaho 449, 259 P.3d 595 (2011).

### **Damages.**

Lessees of a gas station could not be awarded either actual or statutory damages for station owner's supplying lessees with a different brand of gasoline without notifying them of the difference, where lessees failed to prove any ascertainable losses arising from owner's deceptive trade practices. *Jackson v. Wood*, 859 P.2d 378 (Ct. App. 1993).

Trial court erred in dismissing an owner's complaint for failure to prove liability and the owner was entitled to compensatory damages and attorneys' fees, because the district court found that there was a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages and he was not required to prove liability where his allegations for breach of contract and violation of the Idaho consumer protection act were admitted by an agent and his company as being true. *Pierce v. McMullen*, 156 Idaho 465, 328 P.3d 445 (2014).

### **Discretion of Court.**

The determination of who is a prevailing party, for the purpose of receiving an award of attorney fees, is committed to the sound discretion of the trial court; that determination will not be disturbed unless an abuse of discretion has occurred. Where the trial court has exercised its discretion after a careful consideration of the relevant factual circumstances and principles of law, and without arbitrary disregard for those facts and principles of justice, that exercise of discretion has not been abused and will not be disturbed. *Decker v. Homeguard Sys.*, 105 Idaho 158, 666 P.2d 1169 (Ct. App. 1983).

### **Goods.**

Although “goods” defined under the act include intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was “purchase of goods.” *Idaho First Nat’l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

### **Payment of Legal Obligation.**

When a consumer merely pays an existing legal obligation, he does not suffer damages although there may be involved deceptive acts or practices. *Yellow Pine Water User’s Ass’n v. Imel*, 105 Idaho 349, 670 P.2d 54 (1983).

Where consumers had paid no amount exceeding their admitted legal obligation to water authority, they had not suffered “ascertainable loss” such as would entitle them to recovery damages under this section. *Yellow Pine Water User’s Ass’n v. Imel*, 105 Idaho 349, 670 P.2d 54 (1983).

### **Prevailing Party.**

In action by homeowners against seller of hydronic heating systems, trial court did not abuse its discretion in determining that homeowners were the prevailing parties despite the fact that majority of homeowners’ claims were dismissed, that jury awarded damages amounting to only 3% of the recovery sought, and that seller prevailed on counterclaim against builder. *Decker v. Homeguard Sys.*, 105 Idaho 158, 666 P.2d 1169 (Ct. App. 1983).

The amount to be awarded as attorney’s fees was properly identified as a matter of discretion; however, the trial court improperly exercised its discretion in calculating the amount of fees on the basis of prevailing “theories” and the concomitant fractionating of the contingent fee. *Nalen v. Jenkins*, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The intent of this section is to compensate a prevailing plaintiff for the costs of bringing an action under this chapter, and to further that purpose, attorney fees should be allowed on appeal for the prevailing plaintiff. *Nalen v. Jenkins*, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The fact that an award is made to a party does not necessarily require the amount to be limited to the party-attorney agreement; the statute provides for the award of an objectively “reasonable” fee, and such a fee may be

higher or lower than what the party must pay to the attorney under their agreement. *Nalen v. Jenkins*, 114 Idaho 973, 763 P.2d 1081 (Ct. App. 1988).

The trial court did not err in determining that the plaintiffs had to suffer “ascertainable damages” under subsection (1) of this section before they could be considered prevailing parties and awarded attorney fees. *Shurtliff v. Northwest Pools, Inc.*, 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

In denying attorney fees to both parties, the trial court did not venture outside the boundaries of its discretion, nor did it act inconsistently with the legal standards applicable to the award of attorney fees; the trial court’s decision to require each party to bear its own fees appeared to have been reached through the exercise of reason. *Israel v. Leachman*, 139 Idaho 24, 72 P.3d 864 (2003).

In a property sale dispute in which one ruling in favor of the sellers was overturned on appeal, while several other rulings in favor of the sellers were affirmed, the buyer was not entitled to attorney fees on appeal because he was not the prevailing party. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

Dealership was not entitled to attorney’s fees where it did not prevail on appeal. *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, 142 Idaho 235, 127 P.3d 138 (2005).

### **Repeated or Flagrant Violations.**

In a suit by distributor against manufacturer, testimony of four ex-distributors from the same time frame and geographical area was relevant to show repeated or flagrant violations of this chapter. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

### **Standard of Proof.**

This section is remedial in nature; when a party brings an action for violation of this chapter, that party does not have to show an extreme deviation from reasonable standards of conduct in order to be awarded punitive damages, but rather must show repeated or flagrant violations of this chapter. This section contains its own remedies; the only standard the jury must follow is that prescribed in the chapter itself, i.e., repeated or flagrant violations. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

## **Standing.**

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under this section; moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

**Cited** *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001); *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 111 P.3d 162 (Ct. App. 2005).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Attorney Fee Awards in Idaho: A Handbook, Comment. 52 Idaho L. Rev. 583 (2016).

**§ 48-609. Contract for sale or lease — Evidence of indebtedness — Assignment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1971, ch. 181, § 10, p. 847, was repealed by S.L. 1980, ch. 112, § 1.

**§ 48-610. Voluntary compliance — District court approval.** — (1) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the provisions of this chapter from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or of the district court of Ada County and shall be deemed an order of the court enforceable by contempt proceedings.

(2) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose.

(3) The assurance of voluntary compliance shall provide for the discontinuance by the person entering into the same of any method, act or practice alleged to be a violation of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The recovered expenses, costs and fees shall be remitted to the consumer protection account [consumer protection fund] created in [section 48-606, Idaho Code](#), and shall be used for the furtherance of the attorney general's duties and activities under this chapter. The assurance may also include: a stipulation for payment to consumers of actual damages or for restitution of money, property, or other things received from consumers in connection with a violation of the provisions of this chapter; and a stipulation for specific performance.

(4) A violation of such assurance of voluntary compliance shall prima facie establish that the person subject thereto knows, or in the exercise of due care should know, that he has in the past violated or is violating the provisions of this chapter.

(5) Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest, pursuant to [section 48-606, Idaho Code](#).

**History.**

1971, ch. 181, § 11, p. 847; am. 1973, ch. 285, § 9, p. 601; am. 1990, ch. 273, § 7, p. 766.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

Contempt proceedings, § 7-601 et seq.

**Compiler's Notes.**

The bracketed insertion in the second sentence in subsection (3) was added by the compiler to correct the name of the referenced fund. See § 48-606.

**CASE NOTES****Arbitration.**

Supreme court of Idaho had jurisdiction to hear an appeal from an order dismissing a case alleging violations of this chapter on the grounds that the parties had entered into a contract that included a provision requiring them to arbitrate disputes between them; although the order dismissed the case, it had the effect of compelling arbitration. [Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 \(2005\).](#)



**§ 48-611. Investigative demand by attorney general — Report required.** — (1) When the attorney general has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. The return date in said investigative demand shall be not less than twenty (20) days after serving of the demand.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada County.

**History.**

1971, ch. 181, § 12, p. 847; am. 1993, ch. 102, § 4, p. 256.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

The term “this act” near the beginning of subsection (1) refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to

48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

## **CASE NOTES**

Extent of attorney general’s power.

Signature of deputy acceptable.

Waiver of right to object.

### **Extent of Attorney General’s Power.**

An investigative demand does not constitute an unqualified power of the attorney general to require the presentation of the information sought. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **Signature of Deputy Acceptable.**

The attorney general is not required personally to sign an investigative demand issued by his office pursuant to this section, as it may be signed by a deputy attorney general. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

### **Waiver of Right to Object.**

Failure to respond or file a petition pursuant to the procedures and within the time period set forth in this section constitutes a waiver of the right to object to the investigative demand. *State ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 929 P.2d 741 (1996).

**§ 48-612. Additional powers of attorney general.** — To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry; provided that information obtained pursuant to the powers conferred in this chapter shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

**History.**

1971, ch. 181, § 13, p. 847; am. 1990, ch. 213, § 67, p. 535; am. 1990, ch. 273, § 8, p. 766; am. 1991, ch. 243, § 2; am. 2015, ch. 141, § 124, p. 379.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” near the end of the section.

**Compiler’s Notes.**

This section was also amended by S.L. 1990, ch. 213, § 67 to become effective July 1, 1993. However, § 3 of S.L. 1991, ch. 243 repealed § 67, S.L. 1990, ch. 213, effective July 1, 1993.

**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**§ 48-613. Service of notice.** — Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without this state; or (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this state or such person for whom the same is intended; or (3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complaint which institutes a civil proceeding had been filed.

**History.**

1971, ch. 181, § 14, p. 847.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

**CASE NOTES**

**Applicability.**

This section did not authorize service of a summons and complaint by registered or certified mail in a contract action, as the section only applies to the service of a notice, demand or subpoena under the Idaho consumer protection act, § 48-601 et seq. [Telford v. Smith County, 155 Idaho 497, 314 P.3d 179 \(2013\).](#)

**§ 48-614. Failure to obey attorney general — Application to district court.** — (1) If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the attorney general, the attorney general may, after notice, apply to a district court of the county in which the person resides or has a principal place of business, or if the person does not reside in or have a principal place of business in this state, the attorney general may apply to any district court in this state and, after hearing thereon, request an order:

(a) Ordering such person to file such statement or report, or to comply with the subpoena or investigative demand issued by the attorney general; (b) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; and (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) The court shall award the prevailing party reasonable expenses and attorney fees incurred in obtaining an order under the provisions of this section if the court finds that the attorney general's request for an order under this section or a person's resistance to filing any statement or report, or obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Any disobedience of any final order entered under the provisions of this section by any court shall be punished as a contempt thereof. Contempt penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] created in [section 48-606, Idaho Code](#), and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

### **History.**

1971, ch. 181, § 15, p. 847; am. 1990, ch. 273, § 9, p. 766; am. 1991, ch. 243, § 4, p. 592; am. 1993, ch. 102, § 5, p. 256.

## **STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

Contempt proceedings, § 7-601 et seq.

**Compiler's Notes.**

The bracketed insertion in subsection (3) was added by the compiler to correct the name of the referenced fund. See § 48-606.

**Effective Dates.**

Section 5 of S.L. 1991, ch. 243 read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval. Section 3 of this act shall be in full force and effect on and after July 1, 1993. Sections 1 and 4 of this act shall be in full force and effect on and after July 1, 1991." Approved April 4, 1991.

**CASE NOTES****Failure to Object or Respond.**

Because this chapter sets forth a clear procedure and time limit for objecting to an investigative demand, the defendant's failure to object or respond to the investigative demand within the statutory time period was without a reasonable basis in fact or law. Since the state clearly prevailed on appeal, the state was awarded costs and attorney fees. *State ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 929 P.2d 741 (1996).

**§ 48-615. Violation of injunction — Civil penalty.** — Any person who violates the terms of an injunction issued or consent order entered into pursuant to [section 48-606, Idaho Code](#), or an order entered into pursuant to [section 48-614, Idaho Code](#), shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation, the amount of the penalty to be determined by the district court issuing the injunction. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] created in [section 48-606, Idaho Code](#), and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

**History.**

1971, ch. 181, § 16, p. 847; am. 1990, ch. 273, § 10, p. 766; am. 1993, ch. 102, § 6, p. 256.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

The bracketed insertion in the last sentence was added by the compiler to correct the name of the referenced fund. See § 48-606.

**§ 48-616. Forfeiture of corporate franchise.** — Upon petition by the attorney general, the district court of the county in which the principal place of business of the corporation is located may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under [section 48-606, Idaho Code](#).

**History.**

1971, ch. 181, § 17, p. 847; am. 1993, ch. 102, § 7, p. 256.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.



**§ 48-617. Local law enforcement officials — Duties.** — It shall be the duty of local law enforcement officials to provide the attorney general such assistance as the attorney general may request in the investigation, commencement and prosecution of actions pursuant to this chapter.

**History.**

1971, ch. 181, § 18, p. 847; am. 1990, ch. 273, § 11, p. 766.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-618. Construction of chapter.** — This act is to be construed uniformly with federal law and regulations. In any action instituted under this act it shall be an absolute defense to show the challenged practices are subject to and comply with statutes administered by the federal trade commission, or any duties, regulations or decisions interpreting such statutes.

**History.**

1971, ch. 181, § 18, p. 847.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first and second sentences refer to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

For further information on the federal trade commission, see <https://www.ftc.gov>.

**§ 48-619. Limitation of action.** — No private action may be brought under this act more than two (2) years after the cause of action accrues.

**History.**

1971, ch. 181, § 20, p. 847; am. 1997, ch. 127, § 1, p. 380.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1971, Chapter 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619. The reference probably should be to “this chapter,” being chapter 6, title 48, Idaho Code.

Section 21 of S.L. 1971, ch. 181 provided: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 22 of S.L. 1971, ch. 181 declared an emergency. Approved March 24, 1971.

Section 2 of S.L. 1997, ch. 127 declared an emergency. Approved March 15, 1997.

**CASE NOTES**

**Accrual.**

**Action time-barred.**

**Accrual.**

To determine whether debtors have a timely Disclosure Statement ICPA claim, the court must first determine when their alleged cause of action “accrued.” In Idaho, a cause of action accrues when one party may sue

another. Before an “accrued” claim arises under the ICPA, a person must purchase or lease goods or services, and thereby suffer an ascertainable loss. In addition, the ascertainable loss must be the result of a practice declared unlawful by the ICPA. *Beach v. Bank of Am. (In re Beach)*, 447 B.R. 313 (Bankr. D. Idaho 2011).

#### **Action Time-barred.**

Where development company’s improvement of land between property owners’ lot and a paved street in 2007 and 2008 should have put property owners on notice that the development company would not honor its advertised promise to provide property owners with direct access to the street, a suit brought in 2015 was barred by the statute of limitations. *Swafford v. Huntsman Springs, Inc.*, 163 Idaho 209, 409 P.3d 789 (2017).



## Chapter 7

# SHOPLIFTING

Sec.

48-701. Liability for removing or concealing merchandise — Retail theft.

48-702. Liability for acts of minors.

48-703. Definitions.

48-704. Authorized actions of merchants.

48-705. Notice of right of detention.

**§ 48-701. Liability for removing or concealing merchandise — Retail theft.** — Any person who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), costs of suit and reasonable attorneys' fees.

**History.**

**I.C., § 48-701**, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 1, p. 562.

**STATUTORY NOTES**

**Cross References.**

Detention of shoplifting suspects, defense to civil and criminal liability, § 18-4626.

**RESEARCH REFERENCES**

**ALR.** — Actionability of accusation or imputation of shoplifting. **29 A.L.R.3d 961.**

Changing the price tags by patron in self-service store as criminal offense. **60 A.L.R.3d 1293.**

Validity, construction, and effect of statutes establishing shoplifting or its equivalent as separate criminal offense. **64 A.L.R.4th 1088.**

**§ 48-702. Liability for acts of minors.** — The parent having legal custody, of a minor who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), costs of suit and reasonable attorney's fees. Recovery under this section is not limited by any other provision of law which limits the liability of a parent for the tortious conduct of a minor. The liability of parents and of the minor under this chapter is joint and several.

A parent not having legal custody of a minor shall not be liable for the conduct of the minor proscribed by this act.

**History.**

I.C., § 48-702, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 2, p. 562; am. 2012, ch. 257, § 12, p. 709.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 257, deleted “or legal guardian” or “or guardian” following “parent” or “parents” in four places.

**Compiler's Notes.**

The term “this act” at the end of the section refers to S.L. 1974, Chapter 245, which is codified as §§ 48-701 to 48-705.



**§ 48-703. Definitions.** — As used in this chapter:

(a) “Merchandise” means any personal property displayed, held or offered for sale by a merchant.

(b) “Merchant” means an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any merchant’s premises.

(c) “Premises” means any establishment or part thereof wherein merchandise is displayed, held or offered for sale.

(d) “Minor” means any person less than eighteen (18) years of age.

(e) “Retail theft” means the alteration, transfer, or removal of any label, price tag, marking, indicia of value or any other markings which aid in the determination of value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment, for the purpose of attempting to purchase such merchandise either personally or in consort with another, at less than the retail value with the intention of depriving the merchant of the value of such merchandise.

**History.**

I.C., § 48-703, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 3, p. 562.

**§ 48-704. Authorized actions of merchants.** — (a) Any merchant may request a person on his premises to place or keep in full view any merchandise such person may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase or for any other purpose. No merchant shall be criminally or civilly liable on account of having made such a request.

(b) Any merchant who has reason to believe that merchandise has been taken by a person in violation of this act and that he can recover such merchandise by taking such a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

### **History.**

I.C., § 48-704, as added by 1974, ch. 245, § 1, p. 1620.

## **STATUTORY NOTES**

### **Cross References.**

Detention of shoplifting suspects, defense to civil and criminal liability, § 18-4626.

### **Compiler's Notes.**

The term “this act” near the beginning of subsection (2) refers to S.L. 1974, Chapter 245, which is codified as §§ 48-701 to 48-705.

## **RESEARCH REFERENCES**

**ALR.** — Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 A.L.R.3d 998.

**§ 48-705. Notice of right of detention.** — No merchant shall be entitled to immunity from liability provided for in this act unless there is displayed in a conspicuous place on his premises a notice not less than thirteen (13) inches wide and twenty-one (21) inches long, clearly legible and in substantially the following form:

ANY MERCHANT OR HIS AGENT WHO HAS REASON TO BELIEVE THAT MERCHANDISE HAS BEEN REMOVED OR CONCEALED BY A PERSON IN VIOLATION OF THIS ACT MAY DETAIN SUCH PERSON FOR THE PURPOSE OF RECOVERING THE PROPERTY OR NOTIFYING A PEACE OFFICER. A PERSON OR THE PARENTS OR LEGAL GUARDIAN OF A MINOR WHO KNOWINGLY REMOVES MERCHANDISE WITHOUT PAYING THEREFOR, OR CONCEALS MERCHANDISE TO AVOID PAYING THEREFOR, IS CIVILLY LIABLE FOR ITS VALUE, AND ADDITIONAL DAMAGES.

**History.**

I.C., § 48-705, as added by 1974, ch. 245, § 1, p. 1620.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the introductory paragraph refers to S.L. 1974, Chapter 245, which is codified as §§ 48-701 to 48-705.



## Chapter 8

### IDAHO TRADE SECRETS ACT

Sec.

48-801. Definitions.

48-802. Injunctive relief.

48-803. Damages.

48-804. Preservation of secrecy.

48-805. Statute of limitations.

48-806. Effect on other law.

48-807. Short title.

**§ 48-801. Definitions.** — As used in this chapter unless the context requires otherwise:

(1) “Improper means” include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) “Misappropriation” means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) “Computer program” means information which is capable of causing a computer to perform logical operation(s) and:

(a) Is contained on any media or in any format;

(b) Is capable of being input, directly or indirectly, into a computer; and

(c) Has prominently displayed a notice of copyright, or other proprietary or confidential marking, either within or on the media containing the information.

(5) “Trade secret” means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade secrets as defined in this subsection are subject to disclosure by a public agency according to chapter 1, title 74, Idaho Code.

### **History.**

[I.C., § 48-801](#), as added by 1981, ch. 240, § 1, p. 483; am. 1987, ch. 67, § 1, p. 121; am. 1990, ch. 213, § 68, p. 480; am. 2015, ch. 141, § 125, p. 379.

## **STATUTORY NOTES**

### **Amendments.**

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in paragraph (5)(b).

### **Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

## **CASE NOTES**

[Generally known test.](#)

[Misappropriation.](#)

Process.

Trade secret.

### **Generally Known Test.**

Where the process claimed as a trade secret was not contained in the general knowledge of those in the industry, the district court's findings of fact, when applied to the "generally known" and "readily ascertainable" tests, supported the conclusion that there was a protectable trade secret. [Basic Am., Inc. v. Shatila, 133 Idaho 726, 992 P.2d 175 \(1999\).](#)

### **Misappropriation.**

A party may not use another's trade secret, even with independent improvements or modifications, so long as the product or process is substantially derived from the trade secret. This requires the court to apply the test for misappropriation under subsection (2) of this section. [Basic Am., Inc. v. Shatila, 133 Idaho 726, 992 P.2d 175 \(1999\).](#)

Plaintiff demonstrated a likelihood of success on the merits of its Idaho trade secrets act misappropriation claim; however, the injunction was limited to the sale of machines that matched those designed for and purchased by plaintiff or any machine or any other disclosure that would reveal the trade secrets of plaintiff. [Scentsy, Inc. v. Performance Mfg., 2009 U.S. Dist. LEXIS 9171 \(D. Idaho Feb. 9, 2009\).](#)

Because defendant had possession of computer programming source code through his work for plaintiff company (and created much of it), he acquired the code under circumstances giving rise to a duty to maintain its secrecy or limit its use; thus, if defendant used or disclosed the trade secret, he was liable for misappropriation. [Justmed, Inc. v. Byce, 600 F.3d 1118 \(9th Cir. 2010\).](#)

Court reversed and remanded the judgment in favor of plaintiff company on the company's misappropriation claim because, besides filing for a copyright and threatening to withhold the source code, defendant made no other "use" of the source code. While defendant threatened misappropriation, his actions did not rise to the level of misappropriation. [Justmed, Inc. v. Byce, 600 F.3d 1118 \(9th Cir. 2010\).](#)

**Process.**



Trade secrets can consist of different steps that themselves can be readily ascertainable, but the process as a whole may not be readily ascertainable [Basic Am., Inc. v. Shatila, 133 Idaho 726, 992 P.2d 175 \(1999\)](#).

### **Trade Secret.**

Six factors that can be used to show that given information is a trade secret: (1) the extent to which the information is known outside the plaintiff's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. [Wesco Autobody Supply v. Ernest, 149 Idaho 881, 243 P.3d 1069 \(2010\)](#); [La Bella Vita, LLC v. Shuler, 158 Idaho 799, 353 P.3d 420 \(2015\)](#).

In an action against former employees, who resigned and went to work for a competitor, customer lists, lists showing customer buying preferences, the history of customer purchases, and custom paint formulas are trade secrets. [Wesco Autobody Supply v. Ernest, 149 Idaho 881, 243 P.3d 1069 \(2010\)](#).

Genuine issues of fact existed as to whether a baby shower list and a salon's client list and client-related information were taken or used for the competitor's benefit, where there was testimony showing that the baby shower list was at least partially derived from the salon's official client list and also used as a primary source in the creation of the competitor's client list. [La Bella Vita, LLC v. Shuler, 158 Idaho 799, 353 P.3d 420 \(2015\)](#).

A sanitation company's action alleging that a county and a competitor misappropriated its trade secrets was dismissed because the dollar amount of the company's proposal did not constitute a trade secret. The company did not make reasonable efforts to maintain the secrecy of the information. By failing to object to the opening of its proposal after its representative knew proposals were being opened in public, the company failed to take reasonable efforts to maintain secrecy. [Walco, Inc. v. County of Idaho, 159 Idaho 131, 357 P.3d 856 \(2015\)](#).

Because a sanitation company's proposal could not qualify as a trade secret once it was opened and the dollar amount was read aloud at a public meeting, without objection from the company's representative, a county commissioner's possession of the proposal after the meeting could not constitute misappropriation. [Walco, Inc. v. County of Idaho, 159 Idaho 131, 357 P.3d 856 \(2015\)](#).

A sanitation company did not make reasonable efforts to maintain the secrecy of the information in its bid when it did not object to the bid being opened in a public meeting; the sealing of a letter the company's counsel sent to the county was insufficient to create a genuine issue of material fact that the company took reasonable steps to maintain the secrecy of the envelope's contents. [Walco, Inc. v. County of Idaho, 159 Idaho 131, 357 P.3d 856 \(2015\)](#).

A list containing the names and addresses of individuals, some of whom were customers of former employer, an insurance company, did not constitute a trade secret, where the list was almost wholly generated from alternative and independent sources and contained generally known information. *Trumble v. Farm Bureau Mut. Ins. Co.*, — Idaho —, 456 P.3d 201 (2019).

The legislature did not intend the Idaho Trade Secrets Act to be read so broadly that merely hiring a competitor's employee constitutes acquiring a trade secret, because employees will naturally take with them the skills, training and knowledge acquired from previous employment. *Trumble v. Farm Bureau Mut. Ins. Co.*, — Idaho —, 456 P.3d 201 (2019).

**Cited** [Insurance Assocs. Corp. v. Hansen, 111 Idaho 206, 723 P.2d 190 \(Ct. App. 1986\)](#); [Insurance Assocs. Corp. v. Hansen, 116 Idaho 948, 782 P.2d 1230 \(1989\)](#); [Northwest Bec-Corp v. Home Living Serv., 136 Idaho 835, 41 P.3d 263 \(2002\)](#).

## RESEARCH REFERENCES

**Idaho Law Review.** — Hydraulic Fracturing: Trade Secrets and the Mandatory Disclosure of Fracturing Water Composition, Keith B. Hall. 49 Idaho L. Rev. 399 (2013).

**ALR.** — Validity, construction and effect of state motor vehicle warranty legislation. 88 A.L.R.5th 301.

**§ 48-802. Injunctive relief.** — (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

### **History.**

I.C., § 48-802, as added by 1981, ch. 240, § 1, p. 483; am. 1990, ch. 274, § 1, p. 774.

## **CASE NOTES**

Language of injunction.

Limited injunction.

### **Language of Injunction.**

Because defendant did not object to the specificity of the injunction's language at the hearing held to determine the language to be employed in the injunction, defendant could not later claim that the trade secret was too vague to comport with the specificity requirement of *Idaho R. Civ. P. Rule 65(d)*. *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 992 P.2d 175 (1999).

### **Limited Injunction.**

Plaintiff demonstrated a likelihood of success on the merits of its Idaho trade secrets act claim; however, the injunction was limited to the sale of

machines that matched those designed for and purchased by plaintiff or any machine or any other disclosure that would reveal the trade secrets of plaintiff. *Scentsy, Inc. v. Performance Mfg.*, 2009 U.S. Dist. LEXIS 9171 (D. Idaho Feb. 9, 2009).

Actual or threatened misappropriation may be enjoined; therefore, while damages for misappropriation of a trade secret were inappropriate because of the lack of “use” or “disclosure,” as contemplated in the context of trade secret protection, the district court could grant an injunction against defendant’s threatened use or disclosure of the source code if appropriate. *Justmed, Inc. v. Bryce*, 600 F.3d 1118 (9th Cir. 2010).

## **RESEARCH REFERENCES**

**ALR.** — Applicability of inevitable disclosure doctrine barring employment of competitor’s former employee. 36 A.L.R.6th 537.

**§ 48-803. Damages.** — (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1) of this section.

**History.**

I.C., § 48-803, as added by 1981, ch. 240, § 1, p. 483; am. 1990, ch. 274, § 2, p. 774.

**CASE NOTES**

Damages.

Expert testimony.

Misappropriation.

**Damages.**

Company which manufactured and marketed hydrocutters, devices which cut potatoes into french fries using water, was not entitled to an award of development costs in misappropriation of trade secrets action, where misappropriator did not exploit misappropriated trade secrets or receive unjust enrichment as a result of his action, and where manufacturer failed to introduce reasonable royalty rational or case law as a basis for awarding development costs at trial, reviewing court would not address issue on appeal. *GME, Inc. v. Carter*, 128 Idaho 597, 917 P.2d 754 (1996).

### **Expert Testimony.**

Damage awards can be based on expert testimony. *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 992 P.2d 175 (1999).

### **Misappropriation.**

Because a sanitation company's proposal did not qualify as a trade secret once it was opened and the dollar amount was read aloud at a public meeting, without objection from the company's representative, a county commissioner's possession of the proposal after the meeting could not constitute misappropriation. *Walco, Inc. v. County of Idaho*, 159 Idaho 131, 357 P.3d 856 (2015).

## **RESEARCH REFERENCES**

**ALR.** — Applicability of inevitable disclosure doctrine barring employment of competitor's former employee. 36 A.L.R.6th 537.

**§ 48-804. Preservation of secrecy.** — In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

**History.**

I.C., § 48-804, as added by 1981, ch. 240, § 1, p. 483.



**§ 48-805. Statute of limitations.** — An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

**History.**

I.C., § 48-805, as added by 1981, ch. 240, § 1, p. 483.

**§ 48-806. Effect on other law.** — (1) Except as provided in subsection (2) of this section, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil liability remedies for misappropriation of a trade secret.

(2) This chapter does not affect: (a) Contractual remedies, whether or not based upon misappropriation of a trade secret; or (b) Other civil remedies that are not based upon misappropriation of a trade secret; or (c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

**History.**

I.C., § 48-806, as added by 1981, ch. 240, § 1, p. 483; am. 1990, ch. 274, § 3, p. 774.

**§ 48-807. Short title.** — This chapter may be cited as the “Idaho Trade Secrets Act.”

**History.**

I.C., § 48-807, as added by 1981, ch. 240, § 1, p. 483.



Chapter 9  
NEW MOTOR VEHICLE WARRANTIES —  
MANUFACTURER'S DUTY TO REPAIR,  
REFUND OR REPLACE

Sec.

48-901. Definitions.

48-902. Manufacturer's duty to repair — Service and repair facilities.

48-903. Manufacturer's duty to refund or replace.

48-904. Manufacturer's duty to consumers with leased vehicles.

48-905. Resale or re-lease of returned motor vehicle.

48-906. Alternative dispute settlement mechanism.

48-907. Effect and admissibility of decision by informal dispute settlement mechanism.

48-908. Treble damages for bad faith appeal of decision.

48-909. Civil remedy.

48-910. Limitation on actions.

48-911. Remedy nonexclusive.

48-912. Disclosure requirement.

48-913. Dealer liability.

**§ 48-901. Definitions.** — For purposes of this chapter, the following terms have the following meanings:

(1) “Consumer” means the purchaser or lessee, other than for purposes of resale or sublease, of a new motor vehicle used for personal business use, personal, family or household purposes, or a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle.

(2) “Early termination costs” means expenses and obligations incurred by a motor vehicle lessor as a result of an early termination of a written lease agreement and surrender of a motor vehicle to a manufacturer under [section 48-904, Idaho Code](#), including penalties for prepayment of finance arrangements.

(3) “Informal dispute settlement mechanism” means an arbitration process or procedure by which the manufacturer attempts to resolve disputes with consumers regarding motor vehicle nonconformities and repairs that arise during the vehicle’s warranty period.

(4) “Lease” means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four (4) months, used for personal business use, personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.

(5) “Manufacturer” means a person engaged in the business of manufacturing, assembling or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten (10) new motor vehicles.

(6) “Manufacturer’s express warranty” and “warranty” mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(7) “Motor vehicle” means a motor vehicle as defined in chapter 1, title 49, Idaho Code, which is sold or licensed in this state but does not include:

(a) Motorcycle or farm tractor as defined in sections 49-107 and 49-114, Idaho Code; or

(b) Trailer as defined in [section 49-121, Idaho Code](#); or

(c) Any motor vehicle with a gross laden weight over twelve thousand (12,000) pounds.

(8) “Motor vehicle lessor” means a person who holds title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor’s rights under such agreement.

**History.**

[I.C., § 48-901](#), as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 48-901, and 48-903 to 48-909, which comprised [I.C. 48-901](#), and [48-903 to 48-909](#), as added by 1988, ch. 340, § 1, were repealed by S.L. 1998, ch. 333, § 1.

**§ 48-902. Manufacturer's duty to repair — Service and repair facilities.** — (1) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranties or during the period of two (2) years following the date of original delivery of the new motor vehicle to a consumer, or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the vehicle to the applicable express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term or the two (2) year period.

(2) Every manufacturer of motor vehicles sold and for which the manufacturer has made an express warranty shall maintain sufficient service and repair facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties or designate and authorize as service and repair facilities independent repair or service facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties. As a means of complying with the provisions of this subsection, a manufacturer may, in a town or city where there is not a franchise market representative, enter into warranty service contracts with independent service and repair facilities.

**History.**

**I.C., § 48-902**, as added by 1998, ch. 333, § 2, p. 1070; am. 1999, ch. 333, § 1, p. 906.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-902, which comprised **I.C., § 48-902**, as added by 1988, ch. 340, § 1, p. 1009; am. 1989, ch. 310, § 33, p. 769; am. 1990 ch. 235, § 1, p. 671, was repealed by S.L. 1998, ch. 333, § 1.



## **CASE NOTES**

### **Decisions Under Prior Law Lemon Law.**

Because buyer may revoke acceptance only against the seller and because a finding that the purchasers had the right to revoke acceptance against automobile dealer is consistent with a finding that the dealer had not breached any warranties, jury verdict for purchasers was not inconsistent and was permissible on revocation claim against dealer and on the “lemon law” claim against automobile manufacturer. *Griffith v. Latham Motors, Inc.*, 128 Idaho 356, 913 P.2d 572 (1996).

## **RESEARCH REFERENCES**

**ALR.** — Award of attorney’s fees under state motor vehicle warranty legislation (lemon laws). 82 A.L.R.5th 501.

**§ 48-903. Manufacturer's duty to refund or replace.** — (1) If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the amount the consumer paid for the vehicle, inclusive of the value of any trade-in, not to exceed one hundred five percent (105%) of the manufacturer's suggested retail price of the motor vehicle. The manufacturer's suggested retail price shall include all manufacturer installed options. The one hundred five percent (105%) cap shall include the cost of any options or other modifications arranged, installed, or made by the manufacturer's agent, or its authorized dealer within thirty (30) days after the date of original delivery. The manufacturer shall refund to the consumer all other charges including, but not limited to, sales or excise tax, license fees and registration fees, reimbursement for towing and rental vehicle expenses incurred by the consumer as a result of the vehicle being out of service for warranty repair. A reasonable allowance for the consumer's use of the vehicle shall be deducted from the refund to the consumer not to exceed the number of miles attributable to the consumer up to the date of the arbitration hearing multiplied by the purchase price of the vehicle and divided by one hundred twenty thousand (120,000). If the manufacturer offers a replacement vehicle under this section, the consumer has the option of rejecting the replacement vehicle and requiring the manufacturer to provide a refund. Refunds must be made to the consumer, and lienholder, if any, as their interests appear on the records of the division of motor vehicles of the Idaho transportation department. A manufacturer must give to the consumer an itemized statement listing each of the amounts refunded under this section. If the amount of sales or excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one (1) year of the return of the motor vehicle, the state tax commission may refund the tax, as determined under subsection (8) of this section, directly to the consumer and lienholder, if any, as their interests appear on the records of

the division of motor vehicles. It is an affirmative defense to any claim under this chapter: (a) that an alleged nonconformity does not impair the use or market value, or (b) that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(2) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if: (a) the same nonconformity has been subject to repair four (4) or more times by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two (2) years following the date of original delivery of the new motor vehicle to a consumer or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, but the nonconformity continues to exist. However, the manufacturer shall have at least one (1) opportunity to attempt to repair the vehicle before it is presumed a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranty; or (b) the vehicle is out of service by reason of repair for a cumulative total of thirty (30) or more business days during the term or during the period, whichever is the earlier date.

(3) If the nonconformity results in a complete failure of the braking or steering system of the new motor vehicle and is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer, its agents, or its authorized dealers within the applicable express warranty term or during the period of two (2) years following the date of original delivery of the new motor vehicle to a consumer or during the period ending with the date on which the mileage on the motor vehicle reaches twenty-four thousand (24,000) miles, whichever is the earliest date, and the nonconformity continues to exist. However, the manufacturer shall have at least one (1) opportunity to attempt to repair the vehicle before it is presumed a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranty.

(4) The term of an applicable express warranty, the two (2) year period and the thirty (30) day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, or fire, flood, or other natural disaster.

(5) The presumption contained in subsection (2) of this section applies against a manufacturer only if the manufacturer, its agent, or its authorized dealer has received prior written notification from or on behalf of the consumer at least once and an opportunity to cure the defect alleged. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer must forward it to the manufacturer by certified mail, return receipt requested. However, if the manufacturer is not notified either by the consumer or the manufacturer's agent or authorized dealer, then the manufacturer shall have at least one (1) opportunity to cure the alleged defect.

(6) The expiration of the time periods set forth in subsection (2) of this section does not bar a consumer from receiving a refund or replacement vehicle under subsection (1) of this section if the reasonable number of attempts to correct the nonconformity causing the substantial impairment occur within three (3) years following the date of original delivery of the new motor vehicle to a consumer, provided the consumer first reported the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranty.

(7) The manufacturer shall provide to its agent or authorized dealer and, at the time of purchase or lease, the manufacturer's agent or authorized dealer shall provide a written statement to the consumer in the new motor vehicle warranty guide, in 10-point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER THE STATE'S LEMON LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE OR YOUR LEASE PAYMENTS. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE. YOU ALSO HAVE A RIGHT TO SUBMIT YOUR CASE TO THE CONSUMER ARBITRATION PROGRAM WHICH THE MANUFACTURER MUST OFFER IN THIS STATE."

(8) The amount of the sales or excise tax to be paid by the manufacturer to the consumer under subsection (1) of this section shall be the tax paid by the consumer when the vehicle was purchased less an amount equal to the tax paid multiplied by a fraction, the denominator of which is the purchase price of the vehicle and the numerator of which is the allowance deducted from the refund for the consumer's use of the vehicle.

**History.**

I.C., § 48-903, as added by 1998, ch. 333, § 2, p. 1070; am. 1999, ch. 333, § 2, p. 906.

**STATUTORY NOTES**

**Cross References.**

State tax commission, § 63-101.

**Prior Laws.**

Former § 48-903 was repealed. See Prior Laws, § 48-901.

**§ 48-904. Manufacturer's duty to consumers with leased vehicles. —**

A consumer who leases a new motor vehicle has the same rights against the manufacturer under this section as a consumer who purchases a new motor vehicle, except that, if it is determined that the manufacturer must accept return of the consumer's leased vehicle pursuant to [section 48-903, Idaho Code](#), then the consumer lessee is not entitled to a replacement vehicle, but is entitled only to a refund as provided in this section. In such a case, the consumer's leased vehicle shall be returned to the manufacturer and the consumer's written lease with the motor vehicle lessor must be terminated after all charges are settled. The manufacturer shall provide the consumer with a full refund of all costs and charges described below less a reasonable allowance for use. The manufacturer shall provide to the consumer a refund of the pro rata amount of any down payment paid by the consumer on the written lease. The pro rata amount of such a refund shall be the amount of the down payment divided by the number of months of the lease agreement and that amount multiplied by the number of months remaining after the date of the arbitration. The manufacturer shall also refund to the consumer amounts identified as additional charges set forth in [section 48-903, Idaho Code](#), if actually paid by the consumer. The reasonable allowance for use shall be the lease payments made by the consumer until the time of the award of a refund. The manufacturer shall provide the motor vehicle lessor or its assignee with a full refund of the early termination charges plus the residual value of the vehicle, as specified in the lease agreement. The amount of any refund by the manufacturer to the consumer for the pro rata portion of the down payment plus the amount of the refund to the motor vehicle lessor or its assignee by the manufacturer shall not exceed one hundred five percent (105%) of the vehicle's original manufacturer's suggested retail price.

**History.**

[I.C., § 48-904](#), as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-904 was repealed. See Prior Laws, § 48-901.

**§ 48-905. Resale or re-lease of returned motor vehicle.** — (1) If a motor vehicle has been returned under the provisions of [section 48-903, Idaho Code](#), or a similar statute of another state, whether as the result of a legal action or as the result of an informal dispute settlement proceeding, it may not be resold or re-leased in this state unless:

(a) The manufacturer provides the same express warranty it provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; and

(b) The manufacturer provides the consumer with a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: “IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER’S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY IDAHO LAW.”

The provisions of this chapter apply to the resold or re-leased motor vehicle for full term of the warranty required under this section. If a manufacturer has a program similar to the requirements of this subsection and that program provides, at a minimum, substantially the same protections for subsequent consumers, then the manufacturer shall be considered to be in compliance with this subsection.

(2) Notwithstanding the provisions of subsection (1) of this section, if a new motor vehicle has been returned under the provisions of [section 48-903, Idaho Code](#), or a similar statute of another state because of a nonconformity resulting in a complete failure of the braking or steering system of the motor vehicle likely to cause death or serious bodily injury if the vehicle was driven and the failure has not been repaired by the manufacturer, its agent or its authorized dealer, the motor vehicle may not be resold in this state.

### **History.**

[I.C., § 48-905](#), as added by 1998, ch. 333, § 2, p. 1070.



## STATUTORY NOTES

### **Prior Laws.**

Former § 48-905 was repealed. See Prior Laws, § 48-901.

**§ 48-906. Alternative dispute settlement mechanism.** — (1) Any manufacturer doing business in this state, entering into franchise agreements for the sale of its motor vehicles in this state, or offering express warranties on its motor vehicles sold or distributed for sale in this state shall operate, or participate in, an informal dispute settlement mechanism located in the state of Idaho which complies with the provisions of title 16, code of federal regulations, part 703, and the requirements of this section. The provisions of [section 48-903, Idaho Code](#), concerning refunds or replacement do not apply to a consumer who has not first used this mechanism before commencing a civil action, unless the manufacturer allows a consumer to commence an action without first using this mechanism.

(2) An informal dispute settlement mechanism provided for by this chapter shall, at the time a request for arbitration is made, provide to the consumer and to each person who will arbitrate the consumer's dispute, information about this chapter as approved and directed by the attorney general, in consultation with interested parties. The informal dispute settlement mechanism shall permit the parties to present or submit any arguments based on this chapter and shall not prohibit or discourage the consideration of any such arguments.

(3) If, in an informal dispute settlement mechanism, it is decided that a consumer is entitled to a replacement vehicle or refund under [section 48-903, Idaho Code](#), then any refund or replacement offered by the manufacturer or selected by a consumer shall include and itemize all amounts authorized by [section 48-903, Idaho Code](#). If the amount of excise tax refunded is not separately stated, or if the manufacturer does not apply for a refund of the tax within one (1) year of the return of the motor vehicle, the state tax commission may refund the sales tax, as determined under subsection (8) of [section 48-903, Idaho Code](#), directly to the consumer and lienholder, if any, as their interests appear on the records of the division of motor vehicles of the Idaho transportation department.

(4) No documents shall be received by any informal dispute settlement mechanism unless those documents have been provided to each of the

parties in the dispute at or prior to the mechanism's meeting, with an opportunity for the parties to comment on the documents either in writing or orally. If a consumer is present during the informal dispute settlement mechanism's meeting, the consumer may request postponement of the mechanism's meeting to allow sufficient time to review any documents presented at the time of the meeting which had not been presented to the consumer prior to the meeting.

(5) The informal dispute settlement mechanism shall allow each party to appear and make an oral presentation in the state of Idaho unless the consumer agrees to submit the dispute for decision on the basis of documents alone or by telephone, or unless the party fails to appear for an oral presentation after reasonable prior written notice. However, the manufacturer or its representative may participate in the informal dispute settlement mechanism's meeting by telephone if it chooses. If the consumer agrees to submit the dispute for decision on the basis of documents alone, then manufacturer or dealer representatives may not participate in the discussion or decision of the dispute.

(6) Consumers shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the informal dispute settlement hearing.

(7) Where there has been a recent attempt by the manufacturer to repair a consumer's vehicle, but no response has yet been received by the informal dispute mechanism from the consumer as to whether the repairs were successfully completed, the parties must be given the opportunity to present any additional information regarding the manufacturer's recent repair attempt before any final decision is rendered by the informal dispute settlement mechanism. This provision shall not prejudice a consumer's rights under this chapter.

(8) If the manufacturer knows that a technical service bulletin directly applies to the specific mechanical problem being disputed by the consumer, then the manufacturer shall provide the technical service bulletin to the consumer at reasonable cost upon request. The mechanism shall review any such technical service bulletins submitted by either party.

(9) A consumer may be charged a fee to participate in an informal dispute settlement mechanism required by this chapter, but the fee may not exceed the conciliation court filing fee in the county where the arbitration is conducted.

(10) Any party to the dispute has the right to be represented by an attorney in an informal dispute settlement mechanism.

(11) The informal dispute settlement mechanism has all the evidence-gathering powers granted an arbitrator under the uniform arbitration act.

(12) A decision issued in an informal dispute settlement mechanism required by this section may be in writing and signed.

### **History.**

I.C., § 48-906, as added by 1998, ch. 333, § 2, p. 1070.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

State tax commission, § 63-101.

Uniform arbitration act, § 7-901 et seq.

### **Prior Laws.**

Former § 48-906 was repealed. See Prior Laws, § 48-901.

## **CASE NOTES**

### **Decisions Under Prior Law**

### **Arbitration Procedure.**

Because missing information of telephone number and statement was not a substantial departure from the requirements of the federal regulations for arbitration procedures under 16 CFR Part 703, automobile manufacturer's arbitration procedure was qualified under § 48-906 and defendants were not entitled to treble damages under § 48-908. *Griffith v. Latham Motors, Inc.*, 128 Idaho 356, 913 P.2d 572 (1996).

**§ 48-907. Effect and admissibility of decision by informal dispute settlement mechanism.** — The decision issued in an informal dispute settlement mechanism required by this chapter is nonbinding on the parties involved, unless otherwise agreed by the parties. Any party, upon application, may remove the decision to district court for a trial de novo. If the manufacturer is aggrieved by the decision of the informal dispute settlement mechanism, an application to remove the decision must be filed in the district court within thirty (30) days after the date the decision is received by the parties. If the application to remove is not made within thirty (30) days, then the district court shall, upon application of a party, issue an order confirming the decision. A written decision issued by an informal dispute settlement mechanism, and any written findings upon which the decision is based, are admissible as nonbinding evidence in any subsequent legal action and are not subject to further foundation requirements.

**History.**

I.C., § 48-907, as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-907 was repealed. See Prior Laws, § 48-901.

**§ 48-908. Treble damages for bad faith appeal of decision.** — If the district court finds that a party has removed a decision of an informal dispute settlement mechanism in bad faith, by asserting a claim or defense that is frivolous and costly to the other party, or by asserting an unfounded position solely to delay recovery by the other party, then the court shall award to the prevailing party three (3) times the actual damages sustained, together with costs and attorney's fees.

**History.**

I.C., § 48-908, as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Prior Laws.**

Former § 48-908 was repealed. See Prior Laws, § 48-901.

**CASE NOTES**

**Decisions Under Prior Law Arbitration Procedure.**

Because missing information of telephone number and statement was not a substantial departure from the requirements of the federal regulations for arbitration procedures under **16 CFR Part 703**, automobile manufacturer's arbitration procedure was qualified under § 48-906 and defendants were not entitled to treble damages under § 48-908. **Griffith v. Latham Motors, Inc., 128 Idaho 356, 913 P.2d 572 (1996).**

**§ 48-909. Civil remedy.** — Any consumer injured by a violation of this chapter may bring a civil action to enforce this chapter and recover costs and disbursements, including reasonable attorney's fees incurred in the civil action. However, the provisions of this section do not include recovery of attorney's fees previously incurred in the course of informal dispute resolution. In addition to the remedies provided herein, the attorney general may, when in the public interest, bring an action pursuant to the Idaho consumer protection act, chapter 6, title 48, Idaho Code, against any manufacturer for violation of this chapter. For purposes of such action, violations of this chapter shall be deemed to be violations of Idaho's consumer protection act. In any such action, the attorney general and district court shall have the same authority as is granted the attorney general and district court under the Idaho consumer protection act.

**History.**

I.C., § 48-909, as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

Consumer protection act, § 48-601 et seq.

**Prior Laws.**

Former § 48-909 was repealed. See Prior Laws, § 48-901.

**§ 48-910. Limitation on actions.** — A civil action brought under this chapter must be commenced within three (3) years of the date of original delivery of the new motor vehicle to a consumer, except that if the consumer applies to an informal dispute settlement mechanism within three (3) years of the date of original delivery of the new motor vehicle to a consumer, and if the consumer is aggrieved by the decision of the informal dispute settlement mechanism, then any appeal of that decision brought under this chapter must be commenced within three (3) months after the date of the final decision by the mechanism.

**History.**

I.C., § 48-910, as added by 1998, ch. 333, § 2, p. 1070.



**§ 48-911. Remedy nonexclusive.** — Nothing in this chapter limits the rights or remedies which are otherwise available to a consumer under any other law.

**History.**

I.C., § 48-911, as added by 1998, ch. 333, § 2, p. 1070.

**§ 48-912. Disclosure requirement.** — In addition to any investigative powers authorized by law, the attorney general may inspect the records of the informal dispute settlement mechanism upon reasonable notice, during regular business hours, and may make available to the public information about the operation of the mechanism, but data on an individual case may not be disclosed without the prior consent of the affected parties.

**History.**

I.C., § 48-912, as added by 1998, ch. 333, § 2, p. 1070.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-913. Dealer liability.** — Nothing in this chapter imposes liability on a dealer or creates an additional cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, unless there is evidence that the related repairs had not been carried out by the dealer in a timely manner or in a manner substantially consistent with the manufacturer's published instructions.

**History.**

I.C., § 48-913, as added by 1998, ch. 333, § 2, p. 1070.



## Chapter 10

# IDAHO TELEPHONE SOLICITATION ACT

Sec.

48-1001. Legislative findings and intent.

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48-1010. Limitation of action.

**§ 48-1001. Legislative findings and intent.** — (1) The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many Idaho residents and businesses have lost money or suffered harm primarily as a result of out-of-state telemarketing abuse. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the following provisions of law are deemed necessary.

(2) It is the intent of the legislature in enacting this chapter to safeguard the public against deceit and financial hardship, to insure, foster and encourage competition and fair dealings among telephone solicitors by requiring adequate disclosure, and to prohibit representations that have the capacity, tendency, or effect of misleading a purchaser. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the “Idaho Telephone Solicitation Act.”

**History.**

I.C., § 48-1001, as added by 1992, ch. 27, § 1, p. 83.

**CASE NOTES**

**Cited** Drug Testing Compliance Grp., LLC v. DOT Compliance Service, 161 Idaho 93, 383 P.3d 1263 (2016).

**§ 48-1002. Definitions.** — In this chapter:

(1) “Business days” means all days of the week except Saturdays and Sundays and all other legal holidays as defined in [section 73-108, Idaho Code](#).

(2) “Conducting business” means making telephone solicitations either to or from locations within the state of Idaho.

(3) “Established business relationship” means a relationship that:

(a) Was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor;

(b) Has not been previously terminated by either party; and

(c) Currently exists or has existed within the immediately preceding eighteen (18) months.

(4) “Goods” means any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(5) “Minor” means any person less than eighteen (18) years of age.

(6) “Newspaper of general circulation” means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(7) “Person” means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts,

business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(8) “Purchaser” means a person who is solicited to become or does become obligated to a telephone solicitor.

(9) “Services” means any work, labor, help, assistance or instruction wherever provided or performed.

(10) “Telephone directory of general circulation” means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(11) “Telephone solicitation” means:

(a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, “communication” means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(12) “Telephone solicitor” means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing



device, engages in a telephone solicitation.

(13) “Unsolicited advertisement” means any advertisement offering goods or services which is transmitted to any person without that person’s prior express invitation or permission unless an established business relationship exists between the sender and recipient which has not been terminated by either party.

(14) “Written confirmation” means a writing that includes the following information: the date of purchase, the telephone solicitor’s complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of [section 48-1004, Idaho Code](#).

### **History.**

[I.C., § 48-1002](#), as added by 1992, ch. 27, § 1, p. 83; am. 1998, ch. 331, § 1, p. 1064; am. 2000, ch. 452, § 2, p. 1422; am. 2004, ch. 102, § 1, p. 358.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 4 of S.L. 2000, ch. 452 provides that the act shall be in full force and effect on and after January 1, 2001.

## **CASE NOTES**

[Cited Drug Testing Compliance Grp., LLC v. DOT Compliance Service, 161 Idaho 93, 383 P.3d 1263 \(2016\).](#)

**§ 48-1003. Unlawful acts.** — (1) It is an unlawful act for a telephone solicitor to:

- (a) Intimidate or torment any person of normal and reasonable sensitivities in connection with a telephone solicitation;
- (b) Refuse to hang up and free the purchaser's line immediately once requested to do so by the purchaser;
- (c) Misrepresent the price, quality, or availability of the goods or services being offered to the purchaser, or not to disclose all material matters relating directly or indirectly to the offered goods or services;
- (d) Advertise, represent, or imply that the person has the approval or endorsement of any government, governmental office, or agency, unless such is the fact;
- (e) Advertise, represent, or imply that the person has a valid registration number when the person does not;
- (f) Utilize any device or method to block or mislead the intended recipient of the call as to the identity of the solicitor, or the trade name of the person being represented by the solicitor on a caller identification telecommunication device;
- (g) Fail to comply with the provisions of [section 48-603A, Idaho Code](#);
- (h) Violate any applicable provision or requirement of this chapter; and
- (i) Send an unsolicited advertisement to a telephone facsimile machine.

(2) Any violation of the provisions of this chapter is an unlawful, unfair, and deceptive act or practice in trade or commerce for the purpose of applying the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

**History.**

[I.C., § 48-1003](#), as added by 1992, ch. 27, § 1, p. 83; am. 1997, ch. 224, § 1, p. 660; am. 1999, ch. 46, § 1, p. 108.

**STATUTORY NOTES**

## **Legislative Intent.**

Section 1 of S.L. 1997, ch. 75 read: “The Legislature finds that with respect to pay-per-telephone call complaints received by state agencies, the overwhelming majority of them involve disputes over whether the consumer called or did not place a significant number of instances, the consumer being charged did not place the call in question. Nevertheless, these citizens have been subjected to various collection efforts, some unconscionable, which seek to coerce consumers into paying the charges regardless of their authenticity. These consumers are faced with the treat of lawsuits, notoriety, and embarrassment if they decline to pay. Therefore, this state’s policy shall be as stated in a new [Section 48-1108, Idaho Code](#), which is that, unless excepted, charges for any adult entertainment pay-per-telephone call shall be void and unenforceable if the consumer has not first entered into a presubscription or comparable agreement, as defined in [Section 48-1102, Idaho Code](#), to purchase the adult entertainment pay-per-telephone call. Also, any effort by the provider of the adult entertainment pay-per-telephone call to collect the charges absent an agreement shall be considered a false and deceptive practice in violation of the Idaho Consumer Protection Act.”

**§ 48-1003A. No telephone solicitation contact list. —**

(1)(a) Any Idaho residential, mobile or telephonic paging device telephone subscriber desiring to be placed on the Idaho “no telephone solicitation contact” list, indicating that the subscriber does not wish to receive telephone solicitations, may be placed upon such list through a procedure approved by the attorney general.

(b) Notwithstanding any other provision of this chapter, a national “do-not-call” registry established and maintained by the federal trade commission, pursuant to [16 CFR 310.4\(b\)\(1\)\(iii\)\(B\)](#), may serve as the Idaho “no telephone solicitation contact” list provided by this chapter. The attorney general may provide to the federal trade commission, for inclusion in the national “do-not-call” registry, the telephone numbers of Idaho residents that are on the Idaho “no telephone solicitation contact” list.

(2) It is a violation of the provisions of this chapter for a telephone solicitor to make or cause to be made any telephone solicitation, as defined by [section 48-1002\(11\)\(a\), Idaho Code](#), to any telephone number which is assigned by a telephone company to an Idaho resident listed on the Idaho “no telephone solicitation contact” list when that telephone number has been on such list for at least three (3) months prior to the date the telephone solicitation is made.

(3) [Section 48-1006, Idaho Code](#), notwithstanding, any violation of the provisions of this section shall subject the person violating the terms of the provisions of this section to a civil penalty, to be imposed by the district court, as follows: for the first violation, not to exceed five hundred dollars (\$500); for the second violation, not to exceed two thousand five hundred dollars (\$2,500); for the third and subsequent violations, not to exceed five thousand dollars (\$5,000) per violation. Penalties received under the provisions of this section shall be expended pursuant to legislative appropriation.

(4) This section is not applicable to telephone solicitations:

(a) To a telephone subscriber's commercial or business telephone number;

(b) Where an established business relationship exists, as defined in subsection (3) of [section 48-1002, Idaho Code](#), between the telephone solicitor and the telephone subscriber and the subscriber has not stated to the telephone solicitor that he does not wish to receive telephone solicitations made by or on behalf of the business with whom the established business relationship exists;

(c) By a minor seeking to sell a good or service, pursuant to a telephone solicitation, for a charitable purpose or organization.

(5) The attorney general shall advise telephone subscribers who register with his office under the provisions of this section of all self-help measures available to them to reduce unwanted telephone solicitations.

### **History.**

[I.C., § 48-1003A](#), as added by 2000, ch. 452, § 3, p. 1422; am. 2004, ch. 102, § 2, p. 358; am. 2013, ch. 130, § 1, p. 299.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 64-1401 et seq.

### **Amendments.**

The 2013 amendment, by ch. 130, rewrote paragraph (4)(b), which formerly read: “(i) Where an established business relationship exists, as defined in subsection (3) of [section 48-1002, Idaho Code](#), between the telephone solicitor and the telephone subscriber; provided however, the established and existing business relationship exception shall not apply between a telephone company and a telephone subscriber under this section unless the telephone subscriber shall have previously consented to receive a telephone solicitation from such company or its agent; (ii) For purposes of this section, ‘telephone company’ means a person providing telecommunications services to the public, or any segment thereof, for compensation, by wire, cable, radio, lightwaves, cellular signal or other means. ‘Telecommunications services’ means the conveyance of voice,

data, sign, signal, writing, sound, messages or other information at any frequency over any part of the electromagnetic spectrum”; and made minor stylistic changes.

**Effective Dates.**

Section 4 of S.L. 2000, ch. 452 provides that the act shall be in full force and effect on and after January 1, 2001.

**§ 48-1003B. Consent required for telemarketing charges to previously obtained accounts.** — (1) As used in this section:

(a) “Account” means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account or other similar account.

(b) “Account holder” means a consumer who owns an account, or a consumer who has authority to cause a charge or debit to an account.

(c) “Authorization” means an account holder providing express consent to a telemarketer or person acting on behalf of the telemarketer, to charge or cause to be charged the account holder’s account for the purchase of goods or services. Authorization is not effective until the account holder has been advised, clearly and conspicuously:

(i) That the telemarketer has the account holder’s account number;

(ii) That the telemarketer is going to charge the account holder’s account;

(iii) The specific account that will be charged;

(iv) The specific amount that the account holder’s account will be charged; and

(v) The name, address and telephone number of the person who will be charging the account holder’s account.

(d) “Charge” means a charge or debit, or an attempt to charge or debit, an account, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services. A charge can occur by electronic or any other means.

(e) “Goods” or “services” has the meaning given to them in section 48-1002(4) and (9), Idaho Code, except that for purposes of this section

these terms are limited to goods or services which are normally used for personal, household or family purposes.

(f) “Previously obtained account number telemarketing call” means a telephone call in which the telemarketer attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call; provided however, that “previously obtained account number telemarketing call” does not include the sale of securities through a telephone call, if the telemarketer is a licensed securities agent or broker in the state of Idaho; provided further, that “previously obtained account number telemarketing call” does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. A “previously obtained account number telemarketing call” does not include a call to or from a current customer of the telemarketer to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the telemarketer and the telemarketer clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(g) “Telemarketer” means any person who regularly engages in a previously obtained account number telemarketing call.

(2) A telemarketer shall not charge or cause a charge to an account holder’s account as a result of a previously obtained account number telemarketing call unless the telemarketer has first obtained authorization from the account holder for the specific charge discussed during the call.

(3) An account holder’s authorization can be in writing or given verbally. If the telemarketer uses written authorization, the telemarketer cannot charge the account holder’s account until the account holder’s written authorization is received by the telemarketer. If the telemarketer uses verbal authorization, either (i) the authorization must be audio taped by the telemarketer and the telemarketer must advise the account holder that his or her authorization is being recorded or (ii) the account holder must disclose the last four (4) digits of the account holder’s account number if the telemarketer has reasonable procedures in effect to verify that such digits as



provided by the account holder match the last four digits of the account to be charged. Authorizations must be kept and maintained for a period of two (2) years and must also be made available to the account holder upon written request.

(4)(a) In the case where a telemarketer utilizes a voice response unit, whether inbound or outbound, an account holder may give authorization by providing the last four (4) digits of the account holder's account number, an account number previously assigned to the account holder by the telemarketer, or an alternate unique identifier which enables the telemarketer to verify or confirm the account holder's authorization; provided however, that the information set forth in subsection (1)(c) of this section must first be clearly and conspicuously disclosed to the account holder.

(b) For purposes of this subsection, "voice response unit" means a device which allows a user to provide or obtain information from a computer system using touch-tone input or speech input.

**History.**

I.C., § 48-1003B, as added by 2001, ch. 315, § 1, p. 1123; am. 2004, ch. 102, § 3, p. 358.

**§ 48-1003C. Automatic dialing-announcing device.** — (1) When a person intends to utilize an automatic dialing-announcing device to send a message by using or connecting to a telephone line, the person must, at the outset of the message, disclose the following:

(a) The name of the person for whom the message is being made; (b) The purpose of the message; and (c) The contact information of the caller.

(2) As used in this section:

(a) “Automatic dialing-announcing device” means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

(b) “Caller” means a person who contacts, or attempts to contact, a subscriber in this state by using an automatic dialing-announcing device.

(c) “Subscriber” means a person who has subscribed to telephone service from a telephone company, or other persons living or residing with the subscribing person.

**History.**

I.C., § 48-1003C, as added by 2007, ch. 203, § 1, p. 627.

**§ 48-1004. Telephone solicitor duties.** — (1) Telephone solicitors shall:

(a) Register with the attorney general at least ten (10) days prior to conducting business in Idaho. All registrations shall be valid for a period of one (1) year from the effective date of the registration. Any information reported in the application which has changed during the year shall be reported within two (2) weeks of such change to the attorney general and shall be included in an amended registration form filed at the time the telephone solicitor renews his registration. Registrations may be renewed annually by applying to the attorney general and paying a registration renewal fee;

(b) File with the attorney general an irrevocable consent appointing the attorney general as an agent to receive civil process in any action, suit, or proceeding brought under this chapter;

(c) Provide his registration number to any purchaser who requests the registration number;

(d) Orally inform the purchaser at the time the purchase is completed of his right to cancel as provided in subsection 48-1004(2), Idaho Code, and state the telephone solicitor's registration number issued by the attorney general;

(e) Provide accurate and complete information when making a registration application and possess and maintain a valid registration as required in this chapter; and

(f) Give the full street address, including the telephone number, of the telephone solicitor if a sale or purchase is completed.

(2) Unless the purchaser has an unqualified right to return the goods or cancel the services and receive a full refund, the telephone solicitor shall send a written confirmation to the purchaser, which shall contain the following statement in ten (10) point bold face type, which sets forth a purchaser's right to cancel any agreement made pursuant to a telephone solicitation under this section:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation whatsoever, within three business days of the date in which you receive this written confirmation.

If you cancel, all payments or other consideration which may have already been made by you will be returned within ten business days following receipt by the telephone solicitor of your cancellation notice.

If you cancel, you must return the goods to the telephone solicitor at the address listed below and at the telephone solicitor's risk and expense within twenty-one days of the date you receive back from the telephone solicitor the payments or consideration you have already made.

To cancel this transaction, deposit in the mail or deliver a signed and dated copy of this cancellation notice or any other written notice to ..... (Name of telephone solicitor) ....., at ..... (Address of seller's place of business) ..... not later than midnight of the third business day after which you received this notice.

I hereby cancel this transaction.

(Date)

(Buyer's signature)

### **History.**

I.C., § 48-1004, as added by 1992, ch. 27, § 1, p. 83.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 64-1401 et seq.

## **CASE NOTES**

### **Contracts Null and Void.**

The telephone sales contracts of telephone solicitors who operate in violation of this chapter, including those who fail to register, are null and void and unenforceable. *Drug Testing Compliance Grp., LLC v. DOT Compliance Service*, 161 Idaho 93, 383 P.3d 1263 (2016).

**§ 48-1005. Exemptions.** — (1) The following telephone solicitors are exempt from the provisions of [section 48-1004, Idaho Code](#):

- (a) A person engaging in telephone solicitations where:
  - (i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or
  - (ii) Less than sixty percent (60%) of such person's prior year's sales were made as a result of telephone solicitations as defined in this chapter.
- (b) A person making a telephone solicitation where the purchaser contacted has previously purchased goods or services from the person or the business entity for which the person is calling.
- (c) A person making a telephone solicitation:
  - (i) Without the intent to make or obtain provisional acceptance of a purchase during the telephone solicitation; and
  - (ii) Who only arranges for the major sales presentation to be made at a later face-to-face meeting between the person and the purchaser, and the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased.
- (d) A person whose business is licensed by any federal or state of Idaho governmental agency, except the secretary of state office, which has the power to revoke any license issued by the agency.
- (e) A person making a telephone solicitation solely for purposes of selling a subscription to or advertising in a newspaper or telephone directory of general circulation.
- (f) A person making a telephone solicitation solely for purposes of selling a magazine, periodical, book, or musical or video recording:
  - (i) Under which the telephone solicitor provides the purchaser with a form which the purchaser may use to instruct the telephone solicitor not to ship the merchandise; and

(ii) Which complies with the federal trade commission's "use of negative option plans by sellers in commerce rule," 16 CFR 425, regulation concerning "use of negative option plans by sellers in commerce" or a continuity plan, subscription arrangement, series arrangement or single purchase under which the telephone solicitor ships goods to a purchaser who has consented in advance to receive such goods and the purchaser is given the opportunity to review goods for at least seven (7) days and to receive a full refund for return of undamaged goods.

(g) A person who has at least one (1) business location in the state under the same name as that used in connection with telephone solicitations and ninety percent (90%) of the person's business involves the purchaser's obtaining services and products at the person's business location.

(h) An issuer or subsidiary of an issuer that has a class of securities which is subject to section 12 of the securities exchange act of 1934 (15 USC sec. 78l) and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G) or (H) of subsection (g)(2) of that section.

(i) A person who solicits sales by periodically publishing and delivering a catalog of the person's merchandise to purchasers if the catalog:

(i) Contains a written description or illustration of each item offered for sale;

(ii) Includes the business address or home office address of the telephone solicitor;

(iii) Includes at least twenty-four (24) pages of written material and illustrations and are distributed in more than one state; and

(iv) Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000).

(2) In any action, suit, or proceeding to enforce the provisions of this chapter, the burden of proving an exemption is upon the person claiming it.

### **History.**

I.C., § 48-1005, as added by 1992, ch. 27, § 1, p. 83; am. 1993, ch. 156, § 1, p. 399.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 1993, ch. 156 declared an emergency. Approved March 25, 1993.

**§ 48-1006. Authority of the attorney general and district court. — (1)**

The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] and expended pursuant to subsection (5) of [section 48-606, Idaho Code](#).

(3) The attorney general shall also have the following authority:

(a) To require the registering telephone solicitor to submit information necessary to assist the attorney general in enforcing the provisions of this section;

(b) To require each registering telephone solicitor to remit a registration fee of fifty dollars (\$50.00) or a registration renewal fee of twenty-five dollars (\$25.00);

(c) To send to each registrant a certificate or other appropriate document demonstrating registration compliance which shall be prominently posted in a publicly accessible place at the telephone solicitor's principal business location; and

(d) To accept service for those telephone solicitors who are required to register and appoint the attorney general as agent to receive civil process. Service may be effected by leaving a copy of the summons and complaint in the office of the attorney general, but it is not effective and complete until five (5) days after:

(i) The plaintiff forthwith sends notice of the service and a copy of the summons and complaint by registered mail to the telephone solicitor at its last address on file with the attorney general; and

(ii) The plaintiff files an affidavit of compliance with the provisions of this section with the district court.

**History.**



I.C., § 48-1006, as added by 1992, ch. 27, § 1, p. 83.

## STATUTORY NOTES

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Compiler's Notes.**

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced fund. See § 48-606.

**§ 48-1007. Private causes of action and remedies.** — (1) Any person who purchases goods or services pursuant to a telephone solicitation and thereby suffers damages as a result of any act, conduct, or practice declared unlawful in this chapter shall have the same rights and remedies in seeking and obtaining redress under this chapter as those granted under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) If a telephone solicitor violates any applicable provision of this chapter, any contract of sale or purchase is null and void and unenforceable.

(3) If a telephone solicitor fails to deliver the goods or services contracted for, pursuant to the federal trade commission's "mail order merchandise rule," 16 CFR 435, the contract to purchase is null and void.

(4) Any contract, agreement to purchase, or written confirmation executed by a purchaser which purports to waive any of the purchaser's rights under this chapter is against public policy and shall be null and void and unenforceable.

(5) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

### **History.**

I.C., § 48-1007, as added by 1992, ch. 27, § 1, p. 83.

## **CASE NOTES**

### **Contracts Null and Void.**

The telephone sales contracts of telephone solicitors who operate in violation of this chapter, including those who fail to register, are null and void and unenforceable. *Drug Testing Compliance Grp., LLC v. DOT Compliance Service*, 161 Idaho 93, 383 P.3d 1263 (2016).

**§ 48-1008. Liability of minors.** — (1) Any minor who purchases goods or services pursuant to any telephone solicitation may disaffirm the purchase within a reasonable time after the purchase is made.

(2) No parent or legal guardian, having legal custody of a minor who is a purchaser pursuant to a telephone solicitation, shall be liable to a telephone solicitor for the purchase of goods or services pursuant to any telephone solicitation.

**History.**

I.C., § 48-1008, as added by 1992, ch. 27, § 1, p. 83.

**§ 48-1009. Consumer notification — Rule making by the Idaho public utilities commission.** — (1) Telephone corporations providing basic local exchange service, as defined in [section 62-603, Idaho Code](#), shall inform customers of the provisions of this chapter. Publication of such notification in an annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer information pages of local telephone directories shall relieve telephone corporations of any and all liability under this chapter to purchasers or others claiming to have suffered harm from telephone solicitors or by operation of the provisions of this chapter.

(2) The public utilities commission shall by rule prescribe the form of such notice.

**History.**

[I.C., § 48-1009](#), as added by 1992, ch. 27, § 1, p. 83.

**STATUTORY NOTES**

**Cross References.**

Public utilities commission, § 61-201.

**§ 48-1010. Limitation of action.** — (1) No private action may be brought under the provisions of this chapter more than two (2) years after the cause of action accrues.

(2) A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

**History.**

I.C., § 48-1010, as added by 1992, ch. 27, § 1, p. 83.



## Chapter 11

# IDAHO PAY-PER-TELEPHONE CALL ACT

Sec.

48-1101. Legislative findings and intent.

48-1102. Definitions.

48-1103. Preamble message.

48-1104. Advertisements.

48-1105. Remedies.

48-1106. Authority of the attorney general and district court.

48-1107. Limitations of action.

48-1108. Adult entertainment pay-per-telephone calls.

**§ 48-1101. Legislative findings and intent.** — (1) The use of pay-per-telephone call services for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many consumers of goods and services have suffered serious losses because of misrepresentations and failures to disclose material facts. For the general welfare of the public and in order to protect the integrity of the pay-per-telephone call service industry, the following provisions of law are deemed necessary.

(2) It is the intent of the legislature in enacting this chapter to safeguard the public against deceit and financial hardship, to insure, foster and encourage competition and fair dealings among information providers by requiring adequate disclosure. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish these purposes.

(3) This chapter shall be known and may be cited as the “Idaho Pay-Per-Telephone Call Act.”

**History.**

I.C., § 48-1101, as added by 1992, ch. 29, § 1, p. 90.



**§ 48-1102. Definitions.** — In this chapter:

(1) “Adult entertainment pay-per-telephone call” means any pay-per-telephone call service that is of a sexually prurient nature. For the purpose of this section, sexually prurient is any comment, request, suggestion, proposal, image, or other communication that, in context, is obscene, lewd, lascivious, or indecent.

(2) “Information provider” means any person, company, or corporation that controls the content of a pay-per-telephone call service. Any telephone corporation which transmits pay-per-telephone call service but does not control the content of the information transmitted is not included within this definition.

(3) “Pay-per-telephone call service” means any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription or comparable agreement and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(4) “Presubscription or comparable agreement” means an agreement to purchase any pay-per-telephone call service and is evidenced by:

(a) A written contractual agreement between an information provider and a legally competent person that is executed for the sole purpose of arranging purchase of pay-per-telephone call services and is separate or easily severable from any promotions or inducements, and in which:

(i) The information provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the information provider’s name and address, a business telephone number which the company may use to obtain additional information or to register a complaint, and the rates of service;

(ii) The information provider agrees to notify the consumer at least one (1) billing cycle in advance of any future rate changes;

- (iii) The consumer agrees to use the services on the terms and conditions disclosed by the information provider; and
  - (iv) The information provider requires the use of an identification number or other means to prevent unauthorized access to the service by the nonsubscribers; or
- (b) Disclosure of a pre-existing credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number, provided that the card:
- (i) Is subject to the dispute resolution procedures of the federal truth-in-lending and fair credit reporting acts;
  - (ii) Has, upon request or application, been delivered to the person to be billed prior to assessment of charges; and
  - (iii) Does not operate to assess charges through automatic number identification.

(5) “Telephone corporation” means any person or corporation that provides basic local exchange service or message telecommunication service.

### **History.**

I.C., § 48-1102, as added by 1992, ch. 29, § 1, p. 90; am. 1997, ch. 75, § 2, p. 155.

## **STATUTORY NOTES**

### **Legislative Intent.**

Section 1 of S.L. 1997, ch. 75 read: “The Legislature finds that with respect to pay-per-telephone call complaints received by state agencies, the overwhelming majority of them involve disputes over whether the consumer called or did not place an adult entertainment pay-per-telephone call. The legislature finds that, in a significant number of instances, the consumer being charged did not place the call in question. Nevertheless, these citizens have been subjected to various collection efforts, some unconscionable, which seek to coerce consumers into paying the charges regardless of their authenticity. These consumers are faced with the threat of

lawsuits, notoriety, and embarrassment if they decline to pay. Therefore, this state's policy shall be as stated in a new [Section 48-1108, Idaho Code](#), which is that, unless excepted, charges for any adult entertainment pay-per-telephone call shall be void and unenforceable if the consumer has not first entered into a presubscription or comparable agreement, as defined in [Section 48-1102, Idaho Code](#), to purchase the adult entertainment pay-per-telephone call. Also, any effort by the provider of the adult entertainment pay-per-telephone call to collect the charges absent an agreement shall be considered a false and deceptive practice in violation of the Idaho Consumer Protection Act.”

### **Federal References.**

The federal truth-in-lending act, referred to in paragraph (4)(b)(i), is codified as [15 U.S.C.S. § 1601 et seq.](#)

The federal fair credit reporting act, referred to in paragraph (4)(b)(i), is codified as [15 U.S.C.S. § 1681 et seq.](#)

**§ 48-1103. Preamble message.** — (1) An information provider that offers pay-per-telephone call services in this state shall include at the beginning of its service a preamble message. No preamble message shall be required for pay-per-telephone call service for which the total charge for such service is two dollars (\$2.00) or less.

(2) The preamble message shall be clearly understandable and audible and state the cost of the call. The preamble must disclose all per-call charges. If the call is billed on a usage sensitive basis, the preamble must state all rates, by minute or other unit of time, any minimum charges and the total cost for calls to that service if the duration of the service can be determined.

(3) The preamble must state the name of the information provider and accurately describe the information, product, or service that the caller will receive for the fee.

(4) The preamble must inform the caller that billing will begin only after a specific identified event following the disclosure message, such as a signal tone, and must provide a reasonable opportunity for the caller to disconnect before that event.

(5) Any preamble message associated with a pay-per-telephone call service that is aimed at or likely to be of interest to children under the age of eighteen (18) must contain a statement that the caller should hang up unless he has parental permission.

(6) A caller may be provided the means to bypass the preamble message on subsequent calls, provided that the caller has sole control of that capability, except that any bypass device shall be disabled for a period of thirty (30) days following the effective date of a price increase for the service. Instructions on how to bypass must either be at the end of the preamble message or at the end of the service.

(7) If the pay-per-telephone call service originates and terminates within local exchange areas served by the same telephone corporation within the state of Idaho, the information provider may apply to the Idaho attorney general for permission to modify the preamble message. The attorney

general may grant such permission if the attorney general is satisfied that the modified message will adequately disclose sufficient material facts which will safeguard the public against deceit and financial hardship. Such decision shall be final and nonappealable.

**History.**

I.C., § 48-1103, as added by 1992, ch. 29, § 1, p. 90.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1104. Advertisements.** — (1) If the total charge for the pay-per-telephone call service is more than two dollars (\$2.00), advertisements by information providers for pay-per-telephone call services must clearly and conspicuously disclose, as that term is defined by the Idaho consumer protection act and regulations promulgated thereunder, the price or cost of the service being advertised, and contain the information required to be set forth in subsection (2) of [section 48-1103, Idaho Code](#), except as provided in subsection (2) of this section.

(2) For purposes of this chapter, a listing in any section of a directory in which businesses or professions are listed alphabetically and which directory is not published more often than twice in a consecutive twelve (12) month period of time, does not constitute an advertisement. Information providers that advertise pay-per-telephone call services in the section of a directory which lists businesses by subject category, and which directory is not published more often than twice in a consecutive twelve (12) month period of time, shall conspicuously disclose in the advertisement that the service is a pay-per-telephone call service but need not disclose the price or cost of the service.

**History.**

[I.C., § 48-1104](#), as added by 1992, ch. 29, § 1, p. 90; am. 1992, ch. 100, § 1, p. 318.

**STATUTORY NOTES**

**Compiler's Notes.**

The Idaho consumer protection act, referred to in subsection (1) of this section, is compiled as § 48-601 et seq.

**§ 48-1105. Remedies.** — (1) When an information provider has failed to comply with any provision of this chapter, any obligation by a consumer that may have arisen from the dialing of a pay-per-telephone call service is void and unenforceable.

(2) Any failure to comply with any provision of this chapter is an unfair and deceptive act or practice. Any person aggrieved by a violation of this chapter shall be entitled to all available remedies against the information provider, pursuant to the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(3) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other statute.

**History.**

I.C., § 48-1105, as added by 1992, ch. 29, § 1, p. 90.

**§ 48-1106. Authority of the attorney general and district court. —**  
The attorney general and district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district court under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

**History.**

I.C., § 48-1106, as added by 1992, ch. 29, § 1, p. 90.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 64-1401 et seq.



**§ 48-1107. Limitations of action.** — (1) No private action may be brought under the provisions of this chapter more than two (2) years after the cause of action accrues.

(2) A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

**History.**

I.C., § 48-1107, as added by 1992, ch. 29, § 1, p. 90.

**§ 48-1108. Adult entertainment pay-per-telephone calls.** — (1) Except as provided in subsection (2) of this section, no charge of any nature for any adult entertainment pay-per-telephone call is valid and enforceable unless the consumer has first entered into a presubscription or comparable agreement to purchase the adult entertainment pay-per-telephone call. Any adult entertainment pay-per-telephone call charges incurred absent a presubscription or comparable agreement are void and unenforceable.

(2) The second and successive time a consumer receives a telephone bill that includes charges for an adult entertainment pay-per-telephone call, the charges, if incurred absent a presubscription or comparable agreement, are void and unenforceable if: (a) The charges were incurred as the result of third-party fraud; or (b) The bill is sent to the consumer by a telephone corporation as a holder in due course and, upon written notification to the applicable telephone corporation of the disputed charge, the telephone corporation is able to recourse the bill back to the information provider or its agent.

(3) Any information provider which, on its own, or through an agent, assign, or successor who seeks to collect a charge of any nature for an adult entertainment pay-per-telephone call that does not have a presubscription or comparable agreement evidencing the consumer's agreement to purchase the call, has committed an unfair, unlawful and deceptive act or practice in trade and commerce for purposes of applying the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

### **History.**

I.C., § 48-1108, as added by 1997, ch. 75, § 3, p. 155.

## **STATUTORY NOTES**

### **Legislative Intent.**

Section 1 of S.L. 1997, ch. 75 read: "The Legislature finds that with respect to pay-per-telephone call complaints received by state agencies, the overwhelming majority of them involve disputes over whether the consumer called or did not place an adult entertainment pay-per-telephone

call. The legislature finds that, in a significant number of instances, the consumer being charged did not place the call in question. Nevertheless, these citizens have been subjected to various collection efforts, some unconscionable, which seek to coerce consumers into paying the charges regardless of their authenticity. These consumers are faced with the threat of lawsuits, notoriety, and embarrassment if they decline to pay. Therefore, this state's policy shall be as stated in a new [Section 48-1108, Idaho Code](#), which is that, unless excepted, charges for any adult entertainment pay-per-telephone call shall be void and unenforceable if the consumer has not first entered into a presubscription or comparable agreement, as defined in [Section 48-1102, Idaho Code](#), to purchase the adult entertainment pay-per-telephone call. Also, any effort by the provider of the adult entertainment pay-per-telephone call to collect the charges absent an agreement shall be considered a false and deceptive practice in violation of the Idaho Consumer Protection Act.”

**Effective Dates.**

Section 4 of S.L. 1997, ch. 75 declared an emergency. Approved March 13, 1997.



## Chapter 12

# IDAHO CHARITABLE SOLICITATION ACT

Sec.

48-1201. Legislative findings and intent.

48-1202. Definitions.

48-1203. Unlawful acts.

48-1204. Authority of the attorney general and district court.

48-1205. Private causes of action and remedies.

48-1206. Limitation of action.

**§ 48-1201. Legislative findings and intent.** — (1) The incidents of deceptive collection of funds in the name of charities are increasing in Idaho. Many generous Idahoans and legitimate charities suffer financial losses because of misrepresentations and failures to disclose material facts by those who falsely claim to represent a charitable organization or purpose.

(2) It is the intent of the legislature to safeguard the public against deceit and financial hardship, to ensure, foster, and encourage truthful solicitation and prohibit representations that have the capacity, tendency, or effect of misleading a contributor or harming the reputation of charitable organizations that do not make such representations. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the “Idaho Charitable Solicitation Act.”

**History.**

I.C., § 48-1201, as added by 1993, ch. 246, § 1, p. 857.

**§ 48-1202. Definitions.** — In this chapter:

(1) “Charitable organization” means:

(a) Any person determined by the Internal Revenue Service to be tax exempt pursuant to [section 501\(c\)\(3\) of the Internal Revenue Code](#); or

(b) Any person who is or who holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner engages in a charitable solicitation.

(2) “Charitable purpose” means:

(a) Any purpose described in [Internal Revenue Code section 501\(c\)\(3\)](#); or

(b) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran, or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety.

(3) “Charitable solicitation” means any oral or written request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value or any portion thereof, will be used for a charitable purpose or benefit a charitable organization. No contribution need be made in order for a charitable solicitation to be deemed to have taken place.

(4) “Container” means any box, carton, package, receptacle, canister, jar, dispenser or machine that offers a product for sale or distribution as part of a charitable solicitation.

(5) “Contribution” means the grant, promise or pledge of money, credit, property, financial assistance or other thing of value in response to a charitable solicitation.

(6) “Damages” means a loss, detriment or injury, whether to person, property, reputation or rights through any act or practice declared unlawful under the provisions of this chapter.

(7) “Disclosure label” means a printed or typed notice that is legible and easy to read and is affixed to a container in a conspicuous place on containers accessible to the public. Disclosure labels shall inform the public of the following:

(a) The approximate annual percentage paid, if any, to any individual, person or charitable organization to maintain, service or collect the contributions raised by the solicitation;

(b) The net percentage or sum paid to the specific charitable purpose in the most recent calendar year;

(c) If the maintenance, service, and collection from the container is performed by volunteers or paid individuals.

(8) “Person” means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

### **History.**

**I.C., § 48-1202**, as added by 1993, ch. 246, § 1, p. 857; am. 1996, ch. 182, § 1, p. 576.

## **STATUTORY NOTES**

### **Federal References.**

**Section 501(c)(3) of the Internal Revenue Code**, referred to in this section, is compiled as **26 U.S.C.S. § 501(c)(3)**.



**§ 48-1203. Unlawful acts.** — (1) It is unlawful for any person, except a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, to utilize any unfair, false, deceptive, misleading or unconscionable act or practice. In deciding whether an act or practice is unfair, false, deceptive, misleading or unconscionable within the meaning of this subsection, definitions, standards and interpretations relating thereto under the Idaho consumer protection act and regulations promulgated thereunder shall apply.

(2) It is unlawful for a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, knowingly and willfully to utilize any false, deceptive or misleading act or practice.

(3) It is unlawful for any person or charitable organization to use a container in a public place to solicit contributions by offering a product for sale knowing the container does not have a disclosure label affixed to it. However, no charitable organization shall be liable under this subsection if the container generates less than a gross amount of one hundred dollars (\$100) per year or the charitable organization generates less than a gross amount of five hundred dollars (\$500) per year from all sources for any charitable purpose or purposes. It is an absolute defense to prosecution under this subsection if the person or charitable organization soliciting contributions has given one hundred percent (100%) of the receipts generated by the container to the designated charitable organization to further the charitable purpose or purposes for which contributions were solicited.

### **History.**

I.C., § 48-1203, as added by 1993, ch. 246, § 1, p. 857; am. 1996, ch. 182, § 2, p. 576.

## **STATUTORY NOTES**

### **Cross References.**

Idaho consumer protection act, § 48-601 et seq.

**§ 48-1204. Authority of the attorney general and district court. — (1)**

The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) All penalties, costs, and fees received or recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] and expended pursuant to subsection (5) of [section 48-606](#), [Idaho Code](#).

**History.**

[I.C., § 48-1204](#), as added by 1993, ch. 246, § 1, p. 857.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced fund. See § 48-606.

**§ 48-1205. Private causes of action and remedies.** — (1) Any person who, pursuant to a charitable solicitation, suffers damages as a result of any act, conduct, or practice declared unlawful under the provisions of this chapter, shall have the same rights and remedies in seeking and obtaining redress under the provisions of this chapter as those granted under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures or remedies for any violation or conduct provided for in other law.

**History.**

I.C., § 48-1205, as added by 1993, ch. 246, § 1, p. 857.

**§ 48-1206. Limitation of action.** — (1) No private action may be brought under the provisions of this chapter more than two (2) years after the cause of action accrues.

(2) A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

**History.**

I.C., § 48-1206, as added by 1993, ch. 246, § 1, p. 857.



## Chapter 13

# MUSIC LICENSING AND COPYRIGHT ENFORCEMENT ACT

Sec.

48-1301. Short title.

48-1302. Definitions.

48-1303. Notice and information to be provided.

48-1304. Royalty contract requirements.

48-1305. Prohibited conduct.

48-1306. Remedies — Injunction.

48-1307. Remedies cumulative.

48-1308. Exceptions.

**§ 48-1301. Short title.** — This act shall be known and may be cited as the “Music Licensing and Copyright Enforcement Act of 1996.”

**History.**

**I.C., § 48-1301**, as added by 1996, ch. 330, § 1, p. 1123.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1996, Chapter 330, which is compiled as §§ 48-1301 to 48-1308.

**RESEARCH REFERENCES**

**ALR.** — Preemption of state law claim by federal copyright act — Nature or type of claim asserted. **77 A.L.R.6th 543**.



**§ 48-1302. Definitions.** — As used in this chapter:

(1) “Copyright owner” means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to title 17 of the United States Code, **P.L. 94-553 (17 U.S.C. sec. 101 et seq.)**.

(2) “Nondramatic” means the public performance of a recorded, broadcast, or live musical work; except that “nondramatic” shall not mean the performance of a dramatic work including a play.

(3) “Performing rights society” means an association or corporation that licenses the public performances of nondramatic musical works on behalf of copyright owners, such as the American society of composers, authors and publishers (ASCAP), broadcast music, inc. (BMI), and SESAC, Inc.

(4) “Proprietor” means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility or any other similar place of business or professional office located in the state in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast or otherwise transmitted for the enjoyment of members of the public there assembled.

(5) “Royalty” or “royalties” means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar works.

**History.**

**I.C., § 48-1302**, as added by 1996, ch. 330, § 1, p. 1123.

**STATUTORY NOTES**

**Compiler’s Notes.**

For further information on ASCAP, referred to in subsection (3), see <https://www.ascap.com>.

For further information on BMI, referred to in subsection (3), see <https://www.bmi.com>.

For further information on SESAC, Inc., referred to in subsection (3), see *<https://www.sesac.com>*□'.

The reference and abbreviations enclosed in parentheses so appeared in the law as enacted.

**§ 48-1303. Notice and information to be provided.** — No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless it agrees to provide to the proprietor upon request at the proprietor's place of business, by electronic means or otherwise:

(1) Information as to whether specific copyrighted musical works are in its repertoire; and

(2) The opportunity to review the most current available list of the performing rights society's members or affiliates.

**History.**

I.C., § 48-1303, as added by 1996, ch. 330, § 1, p. 1123.

**§ 48-1304. Royalty contract requirements.** — Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued or renewed in the state on or after July 1, 1996 shall be:

(1) In writing;

(2) Signed by the parties; (3) Written to include, at a minimum, the following information: (a) The proprietor's name and business address and the name and location of each place of business to which the contract applies; (b) The name of the performing rights society; (c) The duration of the contract; and (d) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract.

**History.**

I.C., § 48-1304, as added by 1996, ch. 330, § 1, p. 1123.

**§ 48-1305. Prohibited conduct.** — No performing rights society or any agent or employee thereof shall:

(1) Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or his employees, without first identifying himself to the proprietor or his employees and making known to them the purpose of the discussion or inquiry; (2) Engage in any coercive conduct, act or practice that is substantially disruptive to a proprietor's business; (3) Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or (4) Fail to comply with or fulfill the obligations imposed by sections 48-1303 and 48-1304, Idaho Code. However, nothing in this chapter shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the copyright laws of the United States pursuant to title 17 of the United States Code, P.L. 94-553 (17 U.S.C. sec. 101 et seq.).

**History.**

I.C., § 48-1305, as added by 1996, ch. 330, § 1, p. 1123.

**§ 48-1306. Remedies — Injunction.** — Any person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity.

**History.**

I.C., § 48-1306, as added by 1996, ch. 330, § 1, p. 1123.

**§ 48-1307. Remedies cumulative.** — The rights, remedies and prohibitions contained in this chapter shall be in addition to and cumulative to any other right, remedy or prohibition accorded by common law, federal law or the statutes of the state, and nothing contained in this chapter shall be construed to deny, abrogate or impair any common law or statutory right, remedy or prohibition.

**History.**

I.C., § 48-1307, as added by 1996, ch. 330, § 1, p. 1123.

**§ 48-1308. Exceptions.** — This chapter shall not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission, or to contracts with cable operators, programmers or other transmission services. Nor shall this chapter apply to musical works performed in synchronization with an audio/visual film or tape.

**History.**

I.C., § 48-1308, as added by 1996, ch. 330, § 1, p. 1123.

**RESEARCH REFERENCES**

**A.L.R.** — Enforceability of Synchronization Rights and Licenses in Copyrighted Music. 84 A.L.R. Fed. 2d 345.





## Chapter 14

# ASSISTIVE TECHNOLOGY WARRANTY ACT

Sec.

48-1401. Short title.

48-1402. Definitions.

48-1403. Express warranties.

48-1404. Assistive device replacement or refund.

48-1405. Nonconformity disclosure requirement.

48-1406. Manufacturer's duty to provide reimbursement for temporary replacement of assistive devices and penalties.

48-1407. Enforcement.

**§ 48-1401. Short title.** — This chapter governing the sale of assistive technology devices may be cited as the “Assistive Technology Warranty Act.”

**History.**

I.C., § 48-1401, as added by 1997, ch. 276, § 1, p. 819.

**§ 48-1402. Definitions.** — As used in this chapter:

(1) “Assistive device” is an item, piece of equipment, or product system that is designated and used to increase, maintain or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself or working. The term includes, but is not limited to: manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual; hearing aids, assistive listening devices and other aids that enhance an individual’s ability to hear or communicate; voice synthesized computer modules, optical scanners, talking software, braille printers, large print materials and other devices that enhance an individual’s ability to access print or communicate; and other devices such as environmental controls, adaptive transportation aids, communication boards and modified environments. “Assistive device” does not include: (a) a transcutaneous electrical nerve stimulator, neuromuscular electrical stimulator, or dynamic range of motion splint, if the stimulator or splint is already covered by a warranty; (b) a hearing aid covered by a one (1) year express warranty to repair or replace a device with a nonconformity; and (c) items including canes, crutches, walkers, bathroom safety aids, batteries, blood pressure kits, glucose monitors, bandages, household aids, wraps and other disposable items.

(2) “Assistive device dealer” means a person who is in the business of selling new assistive devices.

(3) “Assistive device lessor” means a person who leases new assistive devices to consumers, or who holds the lessor’s rights, under a written lease.

(4) “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.

(5) “Consumer” or “agency” means any of the following:

(a) The purchaser of an assistive device, if the assistive device was purchased from an assistive dealer or manufacturer for purposes other

than resale;

(b) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(c) A person who may enforce the warranty; or

(d) A person who leases an assistive device from an assistive device lessor under a written lease.

(6) “Demonstrator” means an assistive device used primarily for the purpose of demonstration to the public.

(7) “Early termination cost” means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term incurs a penalty for prepayment under a finance arrangement.

(8) “Early termination savings” means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(9) “Manufacturer” means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, and a warrantor of the manufacturer’s assistive device. The term does not include an assistive device dealer or lessor.

(10) “Nonconformity” means a specific condition or generic defect or malfunction, or a defect or condition that substantially impairs the use, value or safety of an assistive device, but does not include a condition or defect that is the result of abuse or unauthorized modification or alteration of the assistive device by the consumer.

(11) “Reasonable attempt to repair” means any of the following occurring within the term of an express warranty applicable to a new assistive device:

- (a) The manufacturer, assistive device lessor, or any of the manufacturer’s authorized assistive device dealers accepts returns of the new assistive device for repair at least two (2) times; or
- (b) The assistive device is out of service for an aggregate of at least thirty (30) cumulative days because of warranty nonconformities.

**History.**

I.C., § 48-1402, as added by 1997, ch. 276, § 1, p. 819; am. 1998, ch. 236, § 1, p. 792.

**§ 48-1403. Express warranties.** — (1) A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or lessor, shall furnish the consumer with an express warranty to preserve or maintain the utility or performance of the assistive device. The duration of the express warranty must not be less than one (1) year after first possession of the assistive device by the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repairs before one (1) year after the first possession of the device by the consumer, the nonconformity must be repaired or replaced.

**History.**

I.C., § 48-1403, as added by 1997, ch. 276, § 1, p. 819.

**§ 48-1404. Assistive device replacement or refund.** — If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out, at the option of the consumer, the requirements under subsection (1)(a) or (b) or (2) of this section, whichever is appropriate.

(1) To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:

(a) Accept return of the assistive device and refund to the consumer and to a holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use; or

(b) Accept return of the assistive device, refund to the assistive device lessor and the holder of a perfected security interest in the assistive device, as their interest may appear, the current value of a written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs, less a reasonable allowance for use.

(2) The manufacturer shall provide a comparable new assistive device replacing the device having the nonconformity. To receive a comparable new assistive device, the consumer shall offer to transfer possession of the assistive device to the manufacturer of the assistive device having the nonconformity. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund, and the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(3) If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device lessor shall receive a refund from the manufacturer. To receive a refund, the assistive device lessor shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides



the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(4) Under this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

(5) Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

(6) No person may enforce the lease against the consumer after the consumer receives a refund.

**History.**

I.C., § 48-1404, as added by 1997, ch. 276, § 1, p. 819.

**§ 48-1405. Nonconformity disclosure requirement.** — No assistive device returned by a consumer or assistive device lessor in this state or another state may be sold or leased in this state unless full disclosure of the reason for return is made to the prospective buyer or lessee.

**History.**

I.C., § 48-1405, as added by 1997, ch. 276, § 1, p. 819.

**§ 48-1406. Manufacturer's duty to provide reimbursement for temporary replacement of assistive devices and penalties. — (1)**

Whenever an assistive device covered by manufacturer's express warranty is tendered by a consumer to a dealer from whom it was purchased or exchanged for the repair of a defect, malfunction or nonconformity to which the warranty is applicable and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a replacement assistive device. The applicable conditions are as follows:

- (a) The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or
- (b) The defect, malfunction or nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.

(2) This section applies for the period of the manufacturer's express warranty.

**History.**

I.C., § 48-1406, as added by 1997, ch. 276, § 1, p. 819.

**§ 48-1407. Enforcement.** — (1) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the chapter in the district court of the county where the consumer resides or where the manufacturer resides or has its principal place of business. Damages include all costs to the consumer attributable to the nonconforming device, but does not include punitive damages. The court shall award a consumer who prevails in such action the amount of any pecuniary loss, and costs and reasonable attorney's fees, and any other equitable relief the court deems appropriate.

(2) These sections shall not be construed to limit rights or remedies available to the consumer under any other law and the remedies provided under this chapter are inclusive and in addition to any other remedies provided by law.

(3) Any waiver by a consumer of rights under this chapter is void.

**History.**

I.C., § 48-1407, as added by 1997, ch. 276, § 1, p. 819.



## Chapter 15

# IDAHO NONPROFIT HOSPITAL SALE OR CONVERSION ACT

Sec.

48-1501. Legislative findings and intent.

48-1502. Definitions.

48-1503. Notice to the attorney general.

48-1504. Attorney general review and written opinion — Time periods — Extension — District court review.

48-1505. Public meetings — Notice of time and place.

48-1506. Nonprofit hospital conversion transaction review elements.

48-1507. Rules — Authority to adopt — Information requests — Consequences of refusal to provide information.

48-1508. Contracts with agencies and consultants — Reimbursement for costs and expenses of review — Failure to pay.

48-1509. Public records.

48-1510. Penalties — Remedies.

48-1511. Private benefit.

48-1512. Application of act.

**§ 48-1501. Legislative findings and intent.** — (1) Nonprofit hospitals hold assets in charitable trust, and are dedicated to the specific charitable purposes set forth in the articles of incorporation of the nonprofit corporations or governing papers of the nonprofit entities operating such hospitals. Nonprofit hospitals have a substantial and beneficial effect on the provision of health care to the people of Idaho, providing as part of their charitable mission free or low-cost health care.

(2) The attorney general is entrusted by law to bring actions on behalf of the public in the event of a breach of the charitable trust, pursuant to [section 67-1401, Idaho Code](#).

(3) This act shall be cited as the “Nonprofit Hospital Sale or Conversion Act.”

**History.**

[I.C., § 48-1501](#), as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 64-1401 et seq.

**Compiler’s Notes.**

The term “this act” refers to S.L. 2000, Chapter 314, which is compiled as §§ 48-1501 to 48-1512.

**§ 48-1502. Definitions.** — As used in this act:

(1) “Hospital” means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing, for not less than twenty-four (24) hours in any week, of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals.

(2) “Nonprofit hospital” means any hospital, including hospitals owned by corporations, that is organized as a nonprofit concern, however structured or created. The term also includes entities owned, governed or controlled by a nonprofit hospital. The term does not include hospitals which are operated by a governmental unit.

(3) “Nonprofit hospital conversion transaction” means:

(a) The sale, transfer, lease, exchange, optioning, or conveyance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital; or

(b) The transfer of control or governance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital.

(c) “Nonprofit hospital conversion transaction” does not include contracts, in the usual course of business, between the nonprofit hospital and another entity:

(i) For the provision of services to the nonprofit hospital;

(ii) For the sale of equipment; or

(iii) For the leasing of space.

(d) Beginning on July 1, 2001, and each July 1 thereafter, the sums of thirty million dollars (\$30,000,000) referenced in subsections (3)(a) and



(3)(b) of this section, shall increase or decrease in accordance with the percentage amount change in the hospital services component of the consumer price index as published by the bureau of labor statistics of the United States department of labor.

(4) “Person” means any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company, insurance company or other organization.

(5) “Charitable trust interest” shall mean those factors specifically listed in [section 48-1506, Idaho Code](#).

**History.**

[I.C., § 48-1502](#), as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” in the introductory paragraph refers to S.L. 2000, Chapter 314, which is compiled as §§ 48-1501 to 48-1512.

For further information on the consumer price index, referred to in paragraph (3)(d), see <https://www.bls.gov/cpi>.

**§ 48-1503. Notice to the attorney general.** — (1) Any nonprofit hospital shall be required to provide written notice to the attorney general prior to entering into any nonprofit hospital conversion transaction.

(2) In addition to identifying the parties to the nonprofit hospital conversion transaction and the general terms of the transaction, the notice to the attorney general provided for in this section shall include and contain relevant information related to the review factors set forth in [section 48-1506, Idaho Code](#).

(3) This chapter shall not apply to a nonprofit hospital if the attorney general has given the nonprofit hospital a written waiver of this chapter as to the nonprofit hospital conversion transaction.

**History.**

[I.C., § 48-1503](#), as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1504. Attorney general review and written opinion — Time periods — Extension — District court review.** — (1) No nonprofit hospital conversion transaction may close or be consummated until the time periods, as provided in this section, have expired.

(2) Within ninety (90) days of receipt of a written notice as required by [section 48-1503, Idaho Code](#), the attorney general shall review the proposed nonprofit hospital conversion transaction and notify the nonprofit hospital in writing of his opinion. The attorney general shall review the nonprofit hospital conversion transaction to determine if it is in the charitable trust interest. In making his determination, the attorney general shall be guided by the factors set forth in [section 48-1506, Idaho Code](#). Upon application by the attorney general, the district court may extend this period for an additional sixty (60) day period, provided the extension is necessary to obtain necessary and relevant information pursuant to section 48-1507(2) or 48-1508(1), Idaho Code.

(3) If the attorney general, in his written opinion, opposes the proposed nonprofit hospital conversion transaction, the parties to the transaction may not close or consummate the transaction for fourteen (14) days after the attorney general's opinion has been issued to allow the attorney general, in his discretion, to file suit seeking to block the transaction.

(4) If the attorney general files a lawsuit seeking to block the nonprofit hospital conversion transaction, the district court shall review, de novo, the transaction to determine if it is in the charitable trust interest. In making this determination, the district court shall use the factors set forth in [section 48-1506, Idaho Code](#). Neither a positive nor a negative finding with regard to one (1) or more of the factors listed in [section 48-1506, Idaho Code](#), shall necessarily mean that the nonprofit hospital conversion transaction is or is not in the charitable trust interest.

### **History.**

[I.C., § 48-1504](#), as added by 2000, ch. 314, § 1, p. 1053.

### **STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1505. Public meetings — Notice of time and place.** — (1) Prior to issuing any written opinion pursuant to [section 48-1504, Idaho Code](#), the attorney general may conduct one (1) or more public meetings, one (1) of which, if held, shall be held in the county where the nonprofit hospital's assets to be transferred are located.

(2) If a party to the intended nonprofit hospital conversion transaction requests the hearing be conducted by a hearing officer outside the attorney general's office, a hearing officer, mutually agreed upon by the parties to the conversion transaction and the attorney general, shall be selected.

(3) At the public meeting, the attorney general or hearing officer shall hear comments from interested persons desiring to make statements regarding the proposed nonprofit hospital conversion transaction.

(4) The attorney general shall cause timely written notice to be provided regarding the time and place of the meeting through publication in one (1) or more newspapers of general circulation in the affected community, to the county board of supervisors, and if applicable, to the city council of the city where the nonprofit hospital's assets to be transferred are located.

(5) If a hearing officer is used, the parties to the nonprofit hospital conversion transaction shall pay the costs of the hearing officer.

### **History.**

[I.C., § 48-1505](#), as added by 2000, ch. 314, § 1, p. 1053.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1506. Nonprofit hospital conversion transaction review elements.** — In reviewing a proposed nonprofit hospital conversion transaction, the attorney general (and the district court as necessary and applicable), shall consider:

(1) Whether the nonprofit hospital will receive fair market value for its charitable trust assets;

(2) Whether the fair market value of the nonprofit hospital's assets to be transferred has been affected by the actions of the parties in a manner that improperly causes the fair market value of the assets to decrease;

(3) Whether the proceeds of the proposed nonprofit hospital conversion transaction will be used consistent with the trust under which the assets are held by the nonprofit hospital and whether the proceeds will be controlled as funds independently of the acquiring or related entities;

(4) Whether the governing body of the nonprofit hospital exercised due diligence in deciding to dispose of the nonprofit hospital's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(5) Whether the nonprofit hospital conversion transaction will result in improper private inurement to any person as set forth in [section 48-1511, Idaho Code](#); and

(6) Whether the terms of any management or services contract negotiated in conjunction with the proposed nonprofit hospital conversion transaction are reasonable.

### **History.**

[I.C., § 48-1506](#), as added by 2000, ch. 314, § 1, p. 1053.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 48-1507. Rules — Authority to adopt — Information requests — Consequences of refusal to provide information.** — (1) The attorney general may adopt such rules, pursuant to chapter 52, title 67, Idaho Code, as the attorney general deems appropriate or necessary to implement this chapter.

(2) The attorney general may request that the nonprofit hospital giving notice under [section 48-1503, Idaho Code](#), in addition to providing information related to the review factors set forth in [section 48-1506, Idaho Code](#), provide other information which the attorney general reasonably deems necessary and relevant to review the nonprofit hospital conversion transaction.

(3) If the nonprofit hospital declines to provide the information requested by the attorney general in subsection (2) of this section, the attorney general may apply to the court for an order requiring the disclosure of the information, which shall be granted if found to be necessary and relevant.

**History.**

[I.C., § 48-1507](#), as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.



**§ 48-1508. Contracts with agencies and consultants — Reimbursement for costs and expenses of review — Failure to pay. —**

(1) Within the time periods designated in [section 48-1504, Idaho Code](#), the attorney general may do any of the following to assist in the review of the proposed nonprofit hospital conversion transaction described in [section 48-1503, Idaho Code](#):

(a) Contract with, consult, and receive advice from any agency of the state or the United States on such terms and conditions the attorney general deems appropriate; or (b) In the attorney general's sole discretion, contract with such experts or consultants the attorney general deems appropriate to assist the attorney general in reviewing the proposed nonprofit hospital conversion transaction.

(2) Any costs incurred by the attorney general pursuant to this section shall not exceed an amount that is reasonable and necessary to conduct the review of the proposed nonprofit hospital conversion transaction. The attorney general shall be exempt from the provisions of any applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this section.

(3) The attorney general, after reviewing the nonprofit hospital conversion transaction, may submit a claim to the board of examiners for reimbursement of his reasonable costs and expenses incurred in reviewing the transaction. Upon submission of a claim from the attorney general, the board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing the attorney general reasonable and actual costs, but not attorney's fees, associated with actions taken pursuant to this chapter. Deficiency warrants authorized by the board of examiners under this section shall not exceed one hundred thousand dollars (\$100,000) for reimbursement of all claims as a result of the attorney general's review of a transaction under this chapter. Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general account [general fund].

**History.**

I.C., § 48-1508, as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to correct the name of the referenced fund. See § 67-1205.

**§ 48-1509. Public records.** — All documents submitted to the attorney general by any person, including nonprofit hospital entities giving notice under [section 48-1503, Idaho Code](#), in connection with the attorney general’s review of the proposed nonprofit hospital conversion transaction pursuant to this chapter shall be deemed records contained in court files of judicial proceedings, as provided for in [section 74-104\(2\), Idaho Code](#), and shall only be subject to public disclosure, pursuant to a public document request, in the same manner as set forth in that section.

**History.**

[I.C., § 48-1509](#), as added by 2000, ch. 314, § 1, p. 1053; am. 2015, ch. 141, § 126, p. 379.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2015 amendment, by ch. 141, substituted “74-104(2)” for “9-340A(2)”.

**§ 48-1510. Penalties — Remedies.** — (1) In his discretion, the attorney general may apply to the district court for an order voiding any nonprofit hospital conversion transaction entered into in violation of the notice and disclosure requirements of [section 48-1503\(1\), Idaho Code](#). Each member of the governing boards and the chief executive officers of the parties to the nonprofit hospital conversion transaction may be subject to a civil penalty of up to ten thousand dollars (\$10,000) for knowingly failing to notify the attorney general of the nonprofit hospital conversion transaction, or for violating the provisions of [section 48-1511, Idaho Code](#), as applicable. The amount of any civil penalty shall be determined by the district court in the county in which the nonprofit hospital's assets to be transferred are located. No such penalty may be imposed under this section merely because the attorney general files suit under [section 48-1504, Idaho Code](#), or because the district court enters an order that the nonprofit hospital conversion transaction at issue is not in the charitable trust interest. The attorney general shall institute proceedings to impose such a penalty.

(2) Nothing in this chapter shall be construed to limit the common law authority of the attorney general regarding charitable trusts and charitable assets in this state. The provisions of this chapter are in addition to, and not a replacement for, any other actions which the attorney general may take under either the common law or statutory law, including rescinding the nonprofit hospital conversion transaction, granting injunctive relief or any combination of these and other remedies available under common law or statutory law.

### **History.**

[I.C., § 48-1510](#), as added by 2000, ch. 314, § 1, p. 1053.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1511. Private benefit.** — No person who is an officer, director, board member or other fiduciary of a nonprofit hospital shall receive anything of value, beyond ordinary compensation, that relates to a nonprofit hospital conversion transaction described in this act and is of such a character as to have the appearance of an improper influence on the person with respect to the person's duties; provided however, that an officer or employee of the nonprofit hospital may accept a job with, perform duties for, and receive ordinary compensation from, the purchasing or converting entity. Any person who violates the provisions of this section shall, in addition to being subject to the provisions of [section 48-1510, Idaho Code](#), forfeit the items of value received in violation of this section.

**History.**

[I.C., § 48-1511](#), as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" near the middle of the first sentence refers to S.L. 2000, Chapter 314, which is compiled as §§ 48-1501 to 48-1512.

**§ 48-1512. Application of act.** — This act applies to all acquisitions, the consummation of which occurs after the effective date of this act.

**History.**

I.C., § 48-1512, as added by 2000, ch. 314, § 1, p. 1053.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” at the beginning of the section refers to S.L. 2000, Chapter 314, which is compiled as §§ 48-1501 to 48-1512.

The phrase “effective date of this act” refers to the effective date of S.L. 2000, Chapter 314, which was effective July 1, 2000.



## Chapter 16

### HEALTH-RELATED CASH DISCOUNT CARDS

Sec.

48-1601. Unlawful practices — Exceptions.

48-1602. Court actions upon violation.

48-1603. Designation of agent.



**§ 48-1601. Unlawful practices — Exceptions.** — It shall be unlawful and a violation of this chapter for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized by an individual and separate contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used.

(4) Nothing in this chapter shall be construed to apply to:

(a) A customer discount or membership card issued by a store or buying club for use at that store or buying club;

(b) A benefit administered by an insurer, a carrier or a managed care organization as defined in sections 41-103, 41-2212 and 41-3903, Idaho Code, respectively.

### **History.**

I.C., § 48-1601, as added by 2000, ch. 185, § 1, p. 454.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 2000, ch. 185 provided that the act shall be in full force and effect on and after July 1, 2000.

**§ 48-1602. Court actions upon violation.** — (1) The attorney general of the state of Idaho, any person, firm, private corporation, municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this chapter and for the recovery of damages.

(2) Any person subject to liability under this section shall be deemed, as a matter of law, to have purposefully availed himself of the privileges of conducting activities within Idaho, sufficient to subject the person to the personal jurisdiction of the district court hearing an action brought pursuant to this chapter.

(3) An action for violation of this section may be brought: (a) In the county where the plaintiff resides; (b) In the county where the plaintiff conducts business; or (c) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(4) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof. It shall not be necessary, except to recover for actual damages under subsection (5) of this section, that actual damages to the plaintiff be alleged or proved.

(5) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant: (a) One hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise distributed within the state of Idaho, or ten thousand dollars (\$10,000), whichever is greater; (b) Three (3) times the amount of the actual damages, if any sustained; (c) Reasonable attorney's fees; (d) Costs; and

(e) Any other relief which the court deems proper.

(6) All actions under this section shall be commenced within two (2) years after the date on which the violation of this chapter occurred or within two (2) years after the person bringing the action discovered, or in the exercise of reasonable diligence, should have discovered, the occurrence of

the violation of this chapter. The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the person bringing the action proves by a preponderance of the evidence that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone commencement of the action.

(7) Any defendant in an action brought under the provisions of this chapter may be required to testify as provided by law. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

(8) The remedies prescribed in this section are cumulative and in addition to any other remedies prescribed by law, and in addition to any other applicable criminal, civil or administrative penalties.

**History.**

I.C., § 48-1602, as added by 2000, ch. 185, § 1, p. 454.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Effective Dates.**

Section 2 of S.L. 2000, ch. 185 provided that the act should be in full force and effect on and after July 1, 2000.

**§ 48-1603. Designation of agent.** — Any person who sells, markets, promotes, advertises or otherwise distributes any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts from health care providers in health-related purchases in Idaho, shall designate an agent who is a resident of Idaho, for service of process and register such agent with the secretary of state.

**History.**

I.C., § 48-1603, as added by 2000, ch. 185, § 1, p. 454.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 2 of S.L. 2000, ch. 185 provided that the act should be in full force and effect on and after July 1, 2000.



## Chapter 17

### BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

Sec.

48-1701. Legislative findings and intent.

48-1702. Definitions.

48-1703. Bad faith assertions of patent infringement.

48-1704. Personal jurisdiction.

48-1705. Authority of the attorney general and district courts.

48-1706. Private cause of action, remedies and damages — Limitation of action.

48-1707. Bond.

48-1708. Exemptions.

**§ 48-1701. Legislative findings and intent.** — (1) The legislature of the state of Idaho finds that:

(a) Idaho is striving to build an entrepreneurial and knowledge-based economy. Attracting and nurturing information technology (IT) and other knowledge-based companies are important parts of this effort and will be beneficial to Idaho's future.

(b) Patents are essential to encouraging innovation, especially in the IT and knowledge-based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs economic growth. Patent holders have every right to enforce their patents when they are valid and infringed, to solicit interest from prospective licensees and to initiate patent enforcement litigation as necessary to protect intellectual property.

(c) The legislature does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. The legislature also recognizes that Idaho is preempted from passing any law that conflicts with federal patent law.

(d) Abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Idaho companies. A business that receives a letter or other communication asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless.

(e) Not only do bad faith patent infringement claims impose a significant burden on individual Idaho businesses, they also undermine Idaho's efforts to attract and nurture IT and other knowledge-based companies. Funds used to avoid the threat of bad faith litigation are no longer available to invest, produce new products, expand or hire new workers, thereby harming Idaho's economy.

(2) Through this narrowly focused chapter, the legislature seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Idaho businesses from abusive and bad faith assertions of patent

infringement and build Idaho's economy, while at the same time carefully not interfering with legitimate patent enforcement actions.

**History.**

I.C., § 48-1701, as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Compiler's Notes.**

For additional information on federal patent law, referred to in paragraph (1)(b), see <https://www.uspto.gov/patent>.

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."



**§ 48-1702. Definitions.** — As used in this chapter:

(1) “Demand letter” means a letter, e-mail or other communication asserting or claiming that the target has engaged in patent infringement, or that the actions of the target would benefit from the grant of a license to any patent, or any similar assertion.

(2) “Idaho person” means a person as defined in [section 48-602, Idaho Code](#).

(3) “Target” means an Idaho person:

(a) Who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(b) Who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(c) Whose customers have received a demand letter asserting that the person’s product, service or technology has infringed a patent.

**History.**

[I.C., § 48-1702](#), as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Compiler’s Notes.**

Section 2 of S.L. 2014, ch. 277 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 48-1703. Bad faith assertions of patent infringement.** — (1) It is unlawful for a person to make a bad faith assertion of patent infringement in a demand letter, a complaint or any other communication.

(2) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

- (a) The person sends a demand letter to a target without first conducting an analysis comparing the claims in the patent to the target's products, services or technology.
- (b) The demand letter does not contain the following information:
  - (i) The patent number;
  - (ii) The name and address of the patent owner or owners and assignee or assignees, if any; and
  - (iii) The factual allegations concerning the specific areas in which the target's products, services and technology infringe the patent or are covered by the claims in the patent.
- (c) The demand letter does not identify specific areas in which the products, services and technology are covered by the claims in the patent.
- (d) The demand letter demands payment of a license fee or response within an unreasonably short period of time.
- (e) The person offers to license the patent for an amount that is not reasonably based on the value of a license to the patent.
- (f) The person asserting a claim or allegation of patent infringement acts in subjective bad faith, or a reasonable actor in the person's position would know or reasonably should know that such assertion is meritless.
- (g) The claim or assertion of patent infringement is deceptive.
- (h) The person or its subsidiaries or affiliates have previously filed or threatened to file one (1) or more lawsuits alleging patent infringement based on the same or similar claim, the person attempted to enforce the

claim of patent infringement in litigation and a court found the claim to be meritless.

(i) Any other factor the court finds relevant.

(3) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(a) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(b) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(c) The person has:

(i) Demonstrated good faith in previous efforts to enforce the patent, or a substantially similar patent; or

(ii) Successfully enforced the patent, or a substantially similar patent, through litigation.

(d) Any other factor the court finds relevant.

(4) Any violation of the provisions of this chapter is an unlawful, unfair and deceptive act or practice in trade or commerce for the purpose of applying the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

### **History.**

I.C., § 48-1703, as added by 2014, ch. 277, § 1, p. 699.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 48-1704. Personal jurisdiction.** — Any person outside this state sending a demand letter to an Idaho person shall be deemed to be transacting business within this state within the meaning of [section 5-514\(a\), Idaho Code](#), and shall thereby be subject to the jurisdiction of the courts of this state.

**History.**

[I.C., § 48-1704](#), as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 48-1705. Authority of the attorney general and district courts. —**  
The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

**History.**

I.C., § 48-1705, as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 48-1706. Private cause of action, remedies and damages — Limitation of action.** — (1) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules promulgated under chapter 6, title 48, Idaho Code, may bring an action in district court. A court may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(a) Equitable relief; (b) Damages; (c) Costs and fees, including reasonable attorney's fees; and (d) Exemplary damages in an amount equal to fifty thousand dollars (\$50,000) or three (3) times the total of damages, costs and fees, whichever is greater.

(2) The remedies provided for in this chapter are not exclusive and shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other statute.

(3) No private action may be brought under the provisions of this chapter more than three (3) years after the cause of action accrues. A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows, or in the exercise of reasonable care should have known, about the violation of the provisions of this chapter. Each bad faith assertion of patent infringement constitutes a separate violation under this chapter.

### **History.**

I.C., § 48-1706, as added by 2014, ch. 277, § 1, p. 699.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 48-1707. Bond.** — Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under this chapter, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

**History.**

I.C., § 48-1707, as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 48-1708. Exemptions.** — A demand letter or assertion of patent infringement that includes a claim for relief arising under **35 U.S.C. section 271(e) (2)** shall not be subject to the provisions of this chapter.

**History.**

**I.C., § 48-1708**, as added by 2014, ch. 277, § 1, p. 699.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2014, ch. 277 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."





## Chapter 18

# RESIDENTIAL SOLAR ENERGY SYSTEM DISCLOSURE ACT

Sec.

48-1801. Short title.

48-1802. Definitions.

48-1803. Applicability.

48-1804. Disclosure statement required.

48-1805. Contents of disclosure statement for any solar agreement.

48-1806. Contents of disclosure statement for system purchase agreement.

48-1807. Contents of disclosure statement for system lease agreement.

48-1808. Good faith estimate allowed.

48-1809. Authority of the attorney general and district court.

Idaho Code § 48-1801

**§ 48-1801. Short title.** — This chapter shall be known and may be cited as the “Residential Solar Energy System Disclosure Act.”

**History.**

I.C., § 48-1801, as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1802. Definitions.** — As used in this chapter:

(1) “Consumer” means a person who, for primarily personal, family, or household purposes: (a) Purchases a residential solar energy system under a solar agreement; or (b) Leases a residential solar energy system under a system lease agreement.

(2) “Residential solar energy system” means a solar energy system that:

(a) Is installed on or in real property in the state of Idaho;

(b) Generates electricity primarily for on-site consumption for primarily personal, family, or household purposes; and (c) Has an electricity delivery capacity that exceeds one (1) kilowatt.

(3) “Solar agreement” means a system purchase agreement or a system lease agreement.

(4) “Solar energy system” means a system or configuration of energy devices that collects and uses solar energy to generate electricity to be used by a consumer.

(5) “Solar retailer” means a person who:

(a) Sells or proposes to sell a residential solar energy system to a consumer under a system purchase agreement; or (b) Owns the residential solar energy system that is the subject of a system lease agreement or proposed system lease agreement.

(6) “System lease agreement” means an agreement:

(a) Under which a consumer leases a residential solar energy system from a solar retailer; and (b) That provides for the consumer to make payments over a term for the lease of the residential solar energy system.

(7) “System purchase agreement” means an agreement under which a consumer purchases a residential solar energy system, or the energy created from a residential solar energy system, from a solar retailer either outright or through installment payments.

**History.**

I.C., § 48-1802, as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1803. Applicability.** — (1) The provisions of this chapter shall apply to any solar agreement entered into on or after October 1, 2019, between a solar retailer and a consumer including, but not limited to, a solar agreement that accompanies the transfer of ownership or lease of real property.

(2) The provisions of this chapter shall not apply to:

(a) The transfer or rental of real property on which a residential solar energy system is, or is expected to be, located if the presence of the residential solar energy system is incidental to the transfer or rental;

(b) A lender, governmental entity, or other third party that enters into an agreement with a consumer to finance a residential solar energy system but is not a party to a system purchase agreement or lease agreement; or

(c) A sale or lease of, or the purchase of electricity from, a solar energy system that is not a residential solar energy system.

**History.**

I.C., § 48-1803, as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1804. Disclosure statement required.** — (1) Before entering a solar agreement, a solar retailer shall provide to a potential consumer a separate, written disclosure statement as provided in this section and, as applicable, the information required in sections 48-1805, 48-1806, and 48-1807, Idaho Code.

(a) The requirements of this subsection may be satisfied by the electronic delivery of a disclosure statement to the potential consumer.

(b) An electronic document delivered pursuant to paragraph (a) of this subsection shall satisfy the font size standard under subsection (2)(a) of this section if the required disclosures are displayed in a clear and conspicuous manner.

(2) A disclosure statement under subsection (1) of this section shall:

(a) Be in at least twelve (12) point font;

(b) Contain:

(i) The name, address, and telephone number or e-mail address of the potential consumer;

(ii) The name, address, telephone number, and e-mail address of the solar retailer;

(iii) The name, address, telephone number, e-mail address, and state contractor registration number of the person who is expected to install the system that is the subject of the solar agreement; and

(iv) If the solar retailer is the person who is expected to provide operations or maintenance support to the potential consumer or who introduced that person to the potential consumer, the name, address, telephone number, e-mail address, and any applicable state contractor registration number of the operations or maintenance support person; and

(c) Any applicable information and disclosures as required in sections 48-1805, 48-1806, and 48-1807, Idaho Code.

**History.**

I.C., § 48-1804, as added by 2019, ch. 267, § 1, p. 781.



**§ 48-1805. Contents of disclosure statement for any solar agreement.**

— If a solar retailer is proposing to enter any solar agreement with a potential consumer, the disclosure statement required in [section 48-1804, Idaho Code](#), shall also include:

(1) If operations or maintenance services are not included as part of the solar agreement, a statement indicating those services are not included in the agreement;

(2) Any written estimate of the savings the potential consumer is projected to realize from the system, including:

(a) At the discretion of the solar retailer, the estimated projected savings over the life of the solar agreement and the estimated projected savings over any longer period not to exceed the anticipated useful life of the system;

(b) Any material assumptions used to calculate estimated projected savings and the source of those assumptions including, but not limited to:

(i) If an annual electricity rate increase is assumed, the rate of the increase and the solar retailer's basis for the assumption of the rate increase;

(ii) The potential consumer's eligibility for or receipt of tax credits or other governmental or utility incentives;

(iii) System production data, including production degradation;

(iv) Reference to any utility tariff and the possibility of additional costs for interconnection under any net metering or similar program;

(v) Electrical usage and the system's designed offset of the electrical usage;

(vi) Historical utility costs paid by the potential consumer; and

(vii) The costs associated with replacing equipment making up any part of the system or, if those costs are not assumed, a statement indicating that those costs are not assumed; and

(c) Two (2) separate statements in capital letters in close proximity to any written estimate of projected savings, with substantially the following form and content:

(i) “THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND ACTUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA IS NOT NECESSARILY REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER INFORMATION REGARDING RATES, CONTACT YOUR LOCAL UTILITY OR THE IDAHO PUBLIC UTILITIES COMMISSION.”; and

(ii) “TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS ESTIMATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.”;

(3) A notice in capital letters with substantially the following form and content: “LEGISLATIVE OR REGULATORY ACTION MAY AFFECT OR ELIMINATE YOUR ABILITY TO SELL OR GET CREDIT FOR ANY EXCESS POWER GENERATED BY THE SYSTEM AND MAY AFFECT THE PRICE OR VALUE OF THAT POWER.”;

(4) A notice describing any right a consumer has under applicable law to cancel or rescind a solar agreement;

(5) A statement describing the system and indicating the system design assumptions, including the make and model of the solar panels and inverters, system size, positioning of the panels on the consumer’s property, estimated first-year energy production, and estimated annual energy production degradation, including the overall percentage degradation over the term of the solar agreement or, at the solar retailer’s option, over the estimated useful life of the system;

(6) A description of any warranty, representation, or guarantee of energy production of the system;

(7) The approximate start and completion dates for the installation of the system;

(8) A statement indicating whether any warranty or maintenance obligations related to the system may be transferred by the solar retailer to a third party and, if so, a statement with substantially the following form and content: “The maintenance and repair obligations under your contract may be assigned or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified of any change to the address, e-mail address, or phone number to use for questions or payments or to request system maintenance or repair.”;

(9) If the solar retailer will not obtain approval to connect the system to the consumer’s utility, a statement to that effect and a description of what the consumer must do to interconnect the system to the utility;

(10) A description of any roof penetration warranty or other warranty that the solar retailer provides the consumer or a statement, in bold capital letters, that the solar retailer does not provide any warranty;

(11) A statement indicating whether the solar retailer will make a fixture filing or other notice in the state or local records related to the system and any fees or other costs associated with the filing that may be charged to the consumer;

(12) A statement at the outset of the agreement in capital letters with substantially the following form and content: “NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO MAKE ANY PROMISE TO YOU THAT IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT CONCERNING COST SAVINGS, TAX BENEFITS, OR GOVERNMENT OR UTILITY INCENTIVES. YOU SHOULD NOT RELY UPON ANY PROMISE OR ESTIMATE THAT IS NOT INCLUDED IN THIS DISCLOSURE STATEMENT.”;

(13) A statement in capital letters at the outset of the agreement with substantially the following form and content: “[name of solar retailer] IS NOT AFFILIATED WITH ANY UTILITY COMPANY OR GOVERNMENT AGENCY. NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO CLAIM AFFILIATION WITH A UTILITY COMPANY OR GOVERNMENT AGENCY.”; and

(14) Any additional information, statement, or disclosure the solar retailer considers appropriate, as long as the additional information,

statement, or disclosure does not have the purpose or effect of obscuring the disclosures required under this chapter.

**History.**

I.C., § 48-1805, as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1806. Contents of disclosure statement for system purchase agreement.** — If a solar retailer is proposing to enter a system purchase agreement with a potential consumer, the disclosure statement required in [section 48-1804, Idaho Code](#), shall also include:

(1) A statement with substantially the following form and content: “You are entering an agreement to purchase an energy generation system. You will own the system installed on your property. You may be entitled to federal tax credits because of the purchase. You should consult your tax advisor.”;

(2) The price quoted to the potential consumer for a non-financed purchase of the system;

(3) If the system purchase agreement is not an outright purchase and requires installment payments:

(a) The interest rate charged and a schedule of required and anticipated payments from the consumer to the solar retailer and any third parties over the term of the system purchase agreement, including application fees, up-front charges, down payment, scheduled payments under the system purchase agreement, payments at the end of the term of the system purchase agreement, payments for any operations or maintenance contract offered by or through the solar retailer in connection with the system purchase agreement, payments for replacement of system components likely to require replacement before the end of the term of the system purchase agreement, and any prepayment penalties; and

(b) A figure that reflects the total amount to be paid by the consumer pursuant to the charges set forth in paragraph (a) of this subsection;

(4) A statement indicating the charges associated with insuring the system against loss or a statement that loss insurance is not included within the schedule of payments under the system purchase agreement;

(5) A statement, if applicable, with substantially the following form and content: “You are responsible for obtaining insurance coverage for any loss or damage to the system. You should consult an insurance professional to understand how to protect against the risk of loss or damage to the system.

You should also consult your home insurer about the potential impact of installing a system.”; and

(6) Information disclosing whether the system purchase agreement is transferrable to a purchaser of the home or real property where the system is located and, if so, any conditions for a transfer.

**History.**

I.C., § 48-1806, as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1807. Contents of disclosure statement for system lease agreement.** — If a solar retailer is proposing to enter a system lease agreement with a potential consumer, the disclosure statement required in [section 48-1804, Idaho Code](#), shall also include:

(1) A statement with substantially the following form and content: “You are entering an agreement to lease an energy generation system. You will lease (not own) the system installed on your property. You will not be entitled to any federal tax credit associated with the lease.”; (2) Information about whether the system lease agreement may be transferred to a purchaser of the home or real property where the system is located and, if so, any conditions for a transfer; (3) If the solar retailer will not obtain insurance against damage or loss to the system, a statement to that effect and a description of the consequences to the consumer if there is damage or loss to the system; and (4) Information about what will happen to the system at the end of the term of the system lease agreement.

**History.**

[I.C., § 48-1807](#), as added by 2019, ch. 267, § 1, p. 781.

**§ 48-1808. Good faith estimate allowed.** — A solar retailer that does not, at the time of providing a disclosure statement required in [section 48-1804\(1\), Idaho Code](#), have information required under sections 48-1805(2)(a) and (b) and 48-1806(2),(3), and (4), Idaho Code, may make a good faith estimate of that information in the disclosure statement if the solar retailer clearly indicates that the information is an estimate and provides the basis for the estimate.

**History.**

[I.C., § 48-1808](#), as added by 2019, ch. 267, § 1, p. 781.



**§ 48-1809. Authority of the attorney general and district court.** — (1) The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district court under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) All penalties, costs, and fees received or recovered by the attorney general shall be remitted to the consumer protection fund and expended pursuant to [section 48-606\(5\), Idaho Code](#).

(3) Nothing in this chapter shall be construed to affect: (a) A remedy a consumer has independent of this chapter; or (b) The attorney general's ability or authority to enforce any other law or regulation.

**History.**

[I.C., § 48-1809](#), as added by 2019, ch. 267, § 1, p. 781.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.



## Chapter 19

### IDAHO CHARITABLE ASSETS PROTECTION ACT

Sec.

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48-1902. Legislative findings and intent.

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48-1913. Penalties and fees recovered — Disposition.

48-1914. Charitable assets recovered — Cy Pres — Restitution recovered.

**§ 48-1901. Short title.** — This chapter shall be known and may be cited as the “Idaho Charitable Assets Protection Act.”

**History.**

I.C., § 48-1901, as added by 2020, ch. 321, § 1, p. 921.

**§ 48-1902. Legislative findings and intent.** — (1) The state of Idaho is home to thousands of charitable organizations that, collectively, hold billions of dollars in charitable assets. Charitable organizations have a legal duty to use their charitable assets according to the charitable purposes designated in their governing documents. The legislature is aware, however, that misuse or misappropriation of charitable assets occurs to the harm of the charitable purposes for which they were donated and the communities that were intended to be benefitted by the charitable donation.

(2) The attorney general, as the state of Idaho's chief legal officer, has a legal duty to ensure that charitable assets are used for their intended purposes.

(3) The current law governing the attorney general's authority over charitable organizations holding charitable assets does not adequately define the attorney general's duties and enforcement authorities. Further, Idaho law has not effectively defined the attorney general's authority to address a person's unlawful misuse or misappropriation of charitable assets.

(4) Therefore, through this chapter, it is the legislature's intent to:

(a) Define the attorney general's duties to protect charitable assets from misuse or misappropriation and to provide the attorney general with the necessary authority and enforcement tools to protect charitable assets; and

(b) Provide a procedure for notifying the attorney general before certain charitable organizations dissolve, convert to a noncharitable organization, terminate, or otherwise dispose of their charitable assets.

(5) The provisions of this chapter are remedial and shall be construed and applied liberally to accomplish the purposes provided for in this section and to protect Idaho charitable assets.

### **History.**

I.C., § 48-1902, as added by 2020, ch. 321, § 1, p. 921.

## **STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1903. Definitions.** — As used in this chapter:

(1) “Accountable person” means a director, officer, executive, manager, trustee, agent, or employee of a charitable organization.

(2) “Attorney general” means the attorney general of the state of Idaho or the attorney general’s designee.

(3) “Charitable asset” means any interest in real or personal property and any other article, commodity, or thing of value that is impressed with a charitable purpose but does not include private assets held in a split-interest trust, as described in [section 4947\(a\)\(2\) of the Internal Revenue Code](#), as referenced in [section 63-3004, Idaho Code](#).

(4) “Charitable organization” means a person who holds charitable assets regardless of the legal form.

(5) “Charitable purpose” means the relief of poverty, the advancement of knowledge, education, or religion, or the promotion of health, the environment, civic or patriotic matters, or any other purpose, the achievement of which is beneficial to the community.

(6) “Person” has the same meaning as that term is defined in [section 15-1-201\(34\), Idaho Code](#).

**History.**

[I.C., § 48-1903](#), as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Federal References.**

Section 4947(a)(2) of the internal revenue code, referred to in subsection (3), is codified as [26 USCS § 4947\(a\)\(2\)](#).

**§ 48-1904. Courts not impaired — Conflict of laws.** — Nothing in this chapter shall impair the rights and powers of the courts of this state with respect to any charitable organization.

**History.**

I.C., § 48-1904, as added by 2020, ch. 321, § 1, p. 921.



**§ 48-1905. Persons excluded.** — The provisions of this chapter shall not apply to:

(1) A state or federally chartered bank, savings bank, savings and loan association, thrift institution, trust company, or credit union; or

(2) An individual who is acting within the scope of his position and duties as a director, officer, executive, manager, or employee of a person described in subsection (1) of this section.

**History.**

I.C., § 48-1905, as added by 2020, ch. 321, § 1, p. 921.

**§ 48-1906. Unlawful acts.** — (1) It is unlawful for an accountable person or charitable organization to knowingly use, or allow to be used, the charitable organization's charitable assets in a manner that is inconsistent with:

- (a) Law applicable to the charitable asset;
- (b) The restrictions contained in a gift instrument regarding the charitable assets; provided, however, that nothing in this section shall prevent a person from seeking a release or modifying the charitable purposes or restrictions contained in a gift instrument, pursuant to [section 33-5006, Idaho Code](#), or other applicable Idaho law; or
- (c) The charitable purpose of the charitable organization that holds the charitable asset.

(2) An accountable person is not liable under this section if the accountable person:

- (a) Discharged his duties as an accountable person in compliance with the standards of conduct set forth in sections 30-30-618 and 30-30-623, Idaho Code, irrespective of whether the accountable person would otherwise be subject to the provisions of such sections;
- (b) Acted in compliance with the applicable trust instrument and that trust instrument complies with Idaho law;
- (c) Qualifies for immunity under [section 6-1605, Idaho Code](#); or
- (d) Acted in compliance with a court order regarding a matter for which the attorney general received timely notice as provided by applicable law, thereby providing the attorney general time to file any objection and be heard by the court regarding the matter.

### **History.**

[I.C., § 48-1906](#), as added by 2020, ch. 321, § 1, p. 921.

**§ 48-1907. Sale or transfer of charitable assets.** — (1) A charitable organization that holds, or within the preceding twelve (12) months received or at any time held, charitable assets with a fair market value in the aggregate exceeding ten thousand dollars (\$10,000) shall provide written notice to the attorney general of the charitable organization's intent to dissolve, convert to a noncharitable organization, terminate, or dispose of all of its charitable assets. In addition, a charitable organization that holds, or within the preceding twelve (12) months received or at any time held, charitable assets with a fair market value in the aggregate exceeding ten thousand dollars (\$10,000) shall provide written notice to the attorney general of the charitable organization's intent to dispose of substantially all of its charitable assets if such charitable organization has no reasonable expectation it will hold charitable assets with a fair market value in the aggregate exceeding ten thousand dollars (\$10,000) in the next twenty-four (24) months.

(2) This section shall not apply to a charitable organization that is subject to the provisions of:

- (a) Chapter 15, title 48, Idaho Code, where notice is timely provided to the attorney general, as provided therein; or
- (b) **Section 68-1204, Idaho Code**, where notice is timely provided to the attorney general, as provided therein.

(3) Written notice to the attorney general under this section must include, at a minimum, the following:

- (a) Legal names and mailing addresses of the directors and officers of the charitable organization;
- (b) A description of the charitable assets and the charitable purpose of the assets; and
- (c) A copy or summary of the plan of dissolution, conversion to a noncharitable organization, or termination and disposal of the charitable organization's charitable assets.

(4) Subject to subsection (8) of this section, no charitable assets shall be disposed of, transferred, or conveyed by a charitable organization subject to this section until at least thirty (30) days after it has given notice required by this section to the attorney general or until the attorney general has consented in writing to the actions set forth in the charitable organization's written notice or indicated in writing that he will take no action with respect to the proposed dissolution, conversion, or termination and disposal of the charitable organization's charitable assets, whichever is earlier.

(5) Failure to comply with the notice requirements of this section subjects the charitable organization's accountable persons to liability as provided by this chapter.

(6) A charitable organization that has provided notice under subsections (1) and (3) of this section and has not received a written response from the attorney general after thirty (30) days of giving such notice may proceed with the proposed dissolution, conversion to a noncharitable organization, or termination and disposal of charitable assets and be deemed in compliance with subsections (1) and (3) of this section.

(7) Within ninety (90) days of completion of the proposed dissolution, conversion to a noncharitable organization, or termination and disposal of all or substantially all of its charitable assets, the charitable organization's board shall deliver to the attorney general a list of who received the assets. The list shall include the address of each person who received the assets and indicate what assets each received.

(8) If the attorney general opposes, in writing, a proposed dissolution, conversion to a noncharitable organization, or termination and disposal of all or substantially all of a charitable organization's charitable assets, as set forth in the charitable organization's notice under subsections (1) and (3) of this section, the charitable organization may not proceed forward with the actions proposed in its written notice for at least fourteen (14) days after the attorney general's written response has been issued to allow the attorney general, in his discretion, to file suit seeking to block the charitable organization's proposed dissolution, conversion to a noncharitable organization, or termination and disposal of its charitable assets, or otherwise to resolve the matter with the affected parties pursuant to [section 48-1909, Idaho Code](#).

(9) If the attorney general files a lawsuit seeking to block a charitable organization's proposed dissolution, conversion to a noncharitable organization, or termination and disposal of charitable trust assets, the district court shall review, de novo, the charitable organization's proposal to determine if it is in compliance with charitable trust law. If the attorney general does not file a lawsuit within the fourteen (14) days provided in this section, the charitable organization may proceed with the proposed dissolution, conversion to a noncharitable organization, or termination and disposal of charitable assets and be deemed in compliance with subsections (1) and (3) of this section.

**History.**

I.C., § 48-1907, as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1908. Investigatory authority of attorney general.** — Whenever the attorney general has reason to believe that an accountable person or charitable organization has violated or is violating the provisions of section 48-1906, 48-1907, or 48-1909, Idaho Code, the attorney general may:

(1) Serve investigative demands using the same procedures and in the same manner as described in [section 48-611, Idaho Code](#);

(2) Issue subpoenas and conduct hearings using the same procedures and in the same manner as described in [section 48-612, Idaho Code](#);

(3) Apply to the district court for compliance orders using the same procedures and in the same manner as described in [section 48-614, Idaho Code](#); and

(4) Retain certified fraud examiners, accountants, appraisers, and other experts to assist the attorney general with the attorney general's investigation.

**History.**

[I.C., § 48-1908](#), as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1909. Voluntary compliance — Consent judgment — District court approval.** — (1) In lieu of initiating or continuing an investigation or action or proceeding under this chapter, the attorney general may accept an assurance of voluntary compliance or consent judgment from a person who the attorney general has reason to believe violated or is violating the provisions of section 48-1906 or 48-1907, Idaho Code.

(2) Such assurance of voluntary compliance or consent decree shall comply with the provisions of [section 48-610, Idaho Code](#), for assurances of voluntary compliance and [section 48-606\(4\), Idaho Code](#), for consent judgments and have the same effect as set forth in those provisions with the addition that such assurances of voluntary compliance and consent judgments may also include provisions that require the person signing the document to report to the attorney general concerning the charitable assets or charitable organization or to perform specific acts relating to the charitable organization.

(3) Matters closed pursuant to this section may at any time be reopened by the attorney general for further proceedings in the public interest pursuant to the procedures set forth in [section 48-1910, Idaho Code](#).

**History.**

[I.C., § 48-1909](#), as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1910. Proceedings by attorney general.** — (1) Whenever the attorney general has reason to believe that a person violated or is violating the provisions of [section 48-1906, Idaho Code](#), the attorney general, acting in the public interest, may bring an action in the name of the state against such person:

- (a) To enjoin any action that constitutes a violation of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to the alleged violator as provided in the Idaho rules of civil procedure;
- (b) To obtain appointment of a master, receiver, or escrow agent to gather, account for, and oversee the charitable assets of the alleged violator and prevent further the dissipation of such assets;
- (c) To remove the alleged violator from his position as an accountable person of the charitable organization;
- (d) To terminate a charitable organization and liquidate its charitable assets in accordance with its governing instrument or applicable law;
- (e) To recover from the alleged violator damages or restitution of any charitable assets misappropriated, lost, or diverted in violation of [section 48-1906, Idaho Code](#);
- (f) To recover from the alleged violator civil penalties of up to fifty thousand dollars (\$50,000), as determined by the district court;
- (g) To obtain specific performance from the alleged violator;
- (h) To recover from the alleged violator the attorney general's reasonable expenses, investigative costs, and attorney's fees; and
- (i) To obtain other appropriate relief.

(2) Whenever the attorney general has reason to believe that a charitable organization violated or is violating the provisions of [section 48-1907, Idaho Code](#), the attorney general, acting in the public interest, may bring an action in the name of the state against such organization and any agents of the organization:



(a) To enjoin any action dissolving the charitable organization, or the dissolving, converting to a noncharitable organization, terminating, or disposing of all or substantially all of the charitable organization's charitable assets by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to the alleged violator as provided in the Idaho rules of civil procedure;

(b) To obtain appointment of a master, receiver, or escrow agent to gather, account for, and oversee charitable assets whenever it shall appear that all or substantially all of the charitable organization's charitable assets may be dissolved, converted, terminated, or disposed of during the course of the proceedings;

(c) To terminate a charitable organization and liquidate its charitable assets in accordance with its governing instrument or applicable law;

(d) In cases where the charitable organization's accountable person or persons knew of and intended to violate the notice provisions of [section 48-1907, Idaho Code](#), to recover from the charitable organization's accountable persons civil penalties of up to five thousand dollars (\$5,000), as determined by the district court; and

(e) To obtain other appropriate relief.

(3) The action may be brought in the district court of the county in which the alleged violator resides or, with consent of the parties, may be brought in the district court of Ada county. The action may be brought in any district court in this state if the alleged violator resides outside of the state.

### **History.**

[I.C., § 48-1910](#), as added by 2020, ch. 321, § 1, p. 921.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1911. Service of notice.** — Service of any notice, demand, or subpoena under this chapter shall be made pursuant to [section 48-613](#), [Idaho Code](#).

**History.**

[I.C., § 48-1911](#), as added by 2020, ch. 321, § 1, p. 921.

**§ 48-1912. Violation of injunction, consent judgment, or order — Civil penalty.** — Any person who violates the terms of a consent judgment entered pursuant to [section 48-1909, Idaho Code](#), or an injunction issued or an order or judgment entered pursuant to [section 48-1910, Idaho Code](#), shall forfeit and pay to the state a civil penalty of no more than ten thousand dollars (\$10,000) per violation, the amount of the penalty to be determined by the district court issuing such order, consent judgment, judgment, or injunction. For the purposes of this section, the district court issuing such order, consent judgment, judgment, or injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties.

**History.**

[I.C., § 48-1912](#), as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1913. Penalties and fees recovered — Disposition.** — Any civil penalties, costs, or attorney's fees sued for and recovered by the attorney general under this chapter shall be remitted to the consumer protection fund created in [section 48-606, Idaho Code](#), and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter, pursuant to legislative appropriation.

**History.**

[I.C., § 48-1913](#), as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**§ 48-1914. Charitable assets recovered — Cy Pres — Restitution recovered.** — (1) Any charitable assets sued for and recovered by the attorney general under this chapter shall be conveyed:

(a) To the injured charitable organization to restore its misappropriated, lost, or diverted charitable assets; or (b) To any charitable organization with a similar charitable purpose as that of the charitable organization from which the charitable assets were recovered, pursuant to a court-approved cy pres distribution.

(2) Any restitution sued for and recovered by the attorney general under this chapter shall be deposited and held in the state treasury until such time as the attorney general directs that payment be made to a person to reimburse for any actual damages he incurred as a direct result of a violation of this chapter.

**History.**

I.C., § 48-1914, as added by 2020, ch. 321, § 1, p. 921.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

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